

BOARD OF INQUIRY INTO THE McCRAE LANDSLIDE

**Submissions of the Mornington Peninsula Shire Council
on the adequacy of the regulatory framework in relation to the
prevention and management of landslides and landslips in Victoria**

Prepared for the purpose of a Board of Inquiry

30 July 2025

I. INTRODUCTION AND SUMMARY

1. The current regulatory framework is inadequate and requires revision. The overarching reasons for this are as follows:
 - (a) The responsibility for the prevention and management of landslides and landslips in Victoria largely rests with the owner of the land from which the landslide or landslip emanates, notwithstanding that the risk posed by a landslide or landslip affects not just individual landowners but also the wider community. Where a landslide or landslip occurs on private land, the powers of local authorities to prevent and manage the event are limited. In respect of privately owned land (as opposed to Crown land), the individual owner is not in a position to adequately identify or manage that risk. This is because the factors that may cause a landslide or landslip are complex and require specialised knowledge, and the steps required to prevent or mitigate it are often prohibitively expensive.
 - (b) The powers given to Municipal Building Surveyors are insufficient to address the dangers arising from landslides and landslips on land where those dangers arise from the condition of the land only.
 - (c) The current planning framework does not allow for a comprehensive and state-wide approach to be taken to identifying and managing landslide and landslip susceptibility.
 - (d) The available regulatory framework does not adequately address landslide or landslip prevention or mitigation. In practice, it is either reactive and only applies after a landslide or landslip has occurred or preventative only insofar as there is a proposed development which requires planning approval.
2. The Shire's recommendations are set out in **bold and underline** in the following submission.

II. SUBMISSIONS

A. Planning controls

1. ***Overview of current planning controls for the McCrae area***
3. The planning controls under the *Planning and Environment Act 1987* (Vic) (**P&E Act**) and the Mornington Peninsula Planning Scheme (**MPPS**) provide tools for the regulation or prohibition of development in areas of landslide or landslip susceptibility. However, as a preliminary but important point, it should be borne in mind that the planning controls under the MPPS are responsive to prospective development of land only; they play no role in regulating pre-existing uses or developments that were in existence prior to the operation of the MPPS or an amendment to it. Pursuant to s 6(3) of the P&E Act, planning controls cannot be retrospectively applied to a use of land or development on land that was lawful before the planning controls came into operation. In this respect, amendments to the MPPS (including to the Victorian Planning Provisions (**VPPs**)), will be of limited effect; they will only apply where a planning permit is required for a proposed development.

4. Further, while planning controls can be used pre-emptively to regulate or prohibit development that may cause or contribute to the occurrence of a landslide or landslip, they cannot address all causes of landslides and landslips. For example, even where planning controls are strictly applied to land of high landslip susceptibility, such controls can do little to mitigate the impact of unforeseen events such as a once in 200 year rain event or burst water main in the vicinity of the land.¹
5. Chief among the tools within the VPPs for addressing landslide or landslip susceptibility is the Erosion Management Overlay (**EMO**).² The EMO is a state-wide planning scheme overlay that is part of the VPPs, in cl 44.01.³ It provides for planning controls—permit requirements, permit exemptions, exemptions from notice and review, and general application requirements and relevant decision guidelines—for land that is prone to slope instability, including as a result of erosion, landslide or landslip, and other land degradation and coastal processes. The purpose of the EMO is to protect such land by minimising disturbance to it and inappropriate development on it. The EMO is applied to particular land, and its requirements are particularised, by local schedules (i.e., an **EMO schedule**).
6. Where land is subject to an EMO schedule, a proposed development will generally trigger a requirement for a planning permit, including developments that are ordinarily exempt from planning permits under cl 62.02-2 of the MPPS if the council chooses to specify that they require a permit.⁴ Removal of vegetation, including non-native vegetation, on such land can only be authorised pursuant to a planning permit, unless a local schedule to cl 44.01 provides for an exemption, a state-wide exemption at cl 44.01-4 applies, and/or a Bushfire Protection Exemption in cl 52.12 applies.
7. Where a local EMO schedule applies in respect of land, the role of the local council is to assess and determine planning permit applications relating to land within the bounds of the EMO schedule, and to ensure that any development that is allowed to proceed is one that is acceptable having regard to the risks arising from the land, and the proposed development on the land, and is subject to conditions that are appropriate to mitigate and manage those risks.
8. Presently, while the MPPS contains six local schedules to the state-wide EMO,⁵ these do not cover all land that is susceptible to landslide or landslip in the Mornington Peninsula, and none apply to the area in the vicinity of the McCrae Landslide.⁶
9. Aside from the EMO, the following components of the MPPS, which do apply to the area in the vicinity of the McCrae Landslide, allow for some consideration of erosion and slope instability in the assessment of planning permit applications:⁷
 - (a) the “Decision Guidelines” in cl 65.01 of the VPPs⁸ for decisions on applications or approvals

¹ See: T790:1–12 (Katanya Barlow).

² T184:44–T185:1 (Bulent Oz).

³ MPPS, p. 784–788.

⁴ However, the EMO does not have the power to require planning permission for buildings and works listed in cl 62.02-1, which include “gardening” and “a children’s cubbyhouse”. Given that “gardening” can include the installation of irrigation systems and drainage, which in turn could increase the risk of landslip or landslide through the saturation of soils, this should be clarified.

⁵ MPPS, pp. 789–800.

⁶ First Statement of David Simon dated 11 April 2025 at [41]–[47].

⁷ See: T224: 25–T226:45 (David Simon).

⁸ MPPS, p. 1300.

of plans, which require consideration of matters including “[t]he 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”;

- (b) Schedule 3 to the Design and Development Overlay (**DDO**),⁹ including the “Design objectives”, which include “[t]o avoid higher densities of development in areas subject to instability, erosion or potential fire hazard and to minimise the extent of required earthworks”, and the “General requirements” which include that “[a]ll buildings and works must be located on land with a slope of less than 20 percent”;
- (c) Schedule 25 to the Environmental Significance Overlay (**ESO**),¹⁰ including the “Decision guidelines” for an application for a permit, which require consideration of “[w]hether any proposed structure or works, including the planting or removal of vegetation, is likely to cause any deterioration of the Port Phillip Coastal Area by virtue of erosion or the deposition of sand or silt or any other reason”; and
- (d) Schedule 1 to the Vegetation Protection Overlay (**VPO**),¹¹ including the “Decision guidelines” for an application for a permit, which require consideration of “[t]he extent of the proposed vegetation removal and its likely effect on the stability of the site, particularly along streamlines or in erosion prone areas.”

10. Notwithstanding the above, the Shire considers that there are a number of features of the existing planning regime that are inadequate for properly dealing with the prevention and management of landslides and landslips in Victoria, and which require reconsideration.

2. *State-wide dedicated landslide susceptibility overlay*

11. While an EMO is an effective planning control for the consideration of landslide risk, the current EMO has a number of limitations:

- (a) The current EMO contains no reference to the primary Australian guidelines for landslide and landslip susceptibility and risk management, namely the “Practice Note Guidelines for Landslide Risk Management” or “Guideline for Landslide Susceptibility, Hazard and Risk Zoning for Land Use Management” developed by the Australian Geomechanics Society (**AGS**). While these documents can be incorporated into local EMO schedules,¹² leaving this to individual municipal councils risks inconsistency in the incorporation of such documents. As such, **these two documents should be incorporated into the state-level VPPs.**
- (b) While landslide susceptibility is an issue that affects a number of municipalities across Victoria, the current EMO is not underpinned by state-level and state-wide landslide susceptibility mapping. Instead, this mapping is left to be obtained by municipal councils. There are also no common requirements as to the methodology, criteria, standards or

⁹ The DDO is at cl 43.02 of the MPPS; Schedule 3 to the DDO is at MPPS, pp. 605–609.

¹⁰ The ESO is at cl 42.01 of the MPPS; Schedule 25 to the ESO is at MPPS, pp. 460–461.

¹¹ The VPO is at cl 42.02 of the MPPS; Schedule 1 to the VPO is at MPPS, pp. 477–479.

¹² See, e.g., South Gippsland Planning Scheme, Sch 1 to cl 44.01, pp. 585–587.

thresholds for the identification of landslip susceptibility and risk tolerance, which creates risks of inconsistency in landslide susceptibility mapping and management. Further, local councils have limited resources to obtain updated landslide susceptibility mapping and risk assessments in a timely manner.

- (c) The scope of the EMO is wide: it encompasses a variety of other risks, including all types of erosion (including by coastal and estuarine processes), and other land degradation. That is, it is not specifically focused on landslide and landslip susceptibility.

12. The Shire submits that there should be a comprehensive and consistent approach to landslide and landslip susceptibility across Victoria funded and subject to direction and management by the State, rather than leaving this issue to be addressed in a piecemeal manner by individual local councils, as it is currently. This could be addressed by amendments to the existing EMO, including incorporating within it reference to the AGS guidelines (including updated versions) and state-level mapping.

However, the Shire submits that the most appropriate course is for there to be a new dedicated landslip susceptibility overlay at the state-level that incorporates these elements.

13. Specifically, the Shire submits that:

- (a) **the State should fund state-wide landslide susceptibility mapping and a landslide risk assessment**, which will allow for areas of landslide and landslip susceptibility across Victoria to be identified by a common methodology, which landowners, prospective purchasers of land, experts, and regulators (including local councils) should then have access to (see below), and for a state-wide consistent landslide risk tolerance to be set; and
- (b) once obtained, **this mapping and risk assessment should form the basis of an amendment to the VPPs to insert a state-wide dedicated planning overlay for landslide susceptibility for which the State would have carriage, including funding and preparing the amendment.**

14. A dedicated planning overlay for landslide susceptibility at the level of the VPPs would have the advantage of signalling that its purpose is the identification of and protection against landslides and landslips, which would provide clarity to users of the planning scheme, including potential purchasers of properties within areas of landslide or landslip susceptibility. It would also allow for more consistent outcomes in landslide and landslip risk management. It would also be consistent with how the VPPs treat other notable hazards such as bushfire (see: cl 44.06 Bushfire Management Overlay (BMO)).

3. Amendment to provisions for bushfire management

15. While a permanent EMO schedule or landslide susceptibility overlay that covers the whole of the Mornington Peninsula would allow for landslide and landslip susceptibility to be formally considered in the assessment of planning applications, the effectiveness of such a measure for the prevention

and management of landslides and landslips in Victoria is limited by the current scope of the state-wide planning controls relating to bushfire management.

16. In particular, cl 52.12 of the VPPs provides for Bushfire Protection Exemptions (**BPEs**), the purpose of which includes “[t]o facilitate the removal of vegetation in specified circumstances to support the protection of human life and property from bushfire”. That clause establishes three broad instances where vegetation removal is permitted despite any requirement of a planning permit, or provision of the planning scheme, to the contrary, namely:
 - (a) to create defensible space around buildings used for accommodation (cl 52.12-1);
 - (b) for vegetation removal along a fenceline (cl 52.12-2); and
 - (c) to create defensible space for a dwelling under cl 44.06 (d 52.12-5).
17. What this means is, even if an EMO schedule (or landslide susceptibility overlay) were to trigger the requirement for a planning permit for vegetation removal, or were to underpin a permit condition placing a limit on the removal of vegetation in an area of highlandslide susceptibility (including around accommodation or along a fenceline), these requirements would be overridden so that vegetation could be removed in such an area subject only to the limits set out in cl 52.12.
18. While the BPEs are essential for managing bushfire risk and protecting life, their general and strict application can have an inadvertent adverse impact on the prevention and management of landslides and landslips. The removal of vegetation on land will increase the amount of water absorbed into the land. Where land is highly susceptible to landslide or landslip the greater the volume of water that is absorbed into the land, the greater the pore or hydrostatic pressure build-up in the slope, and the more likely it is that a landslide or landslip will be triggered.¹³ Notably, many of the areas of high landslip susceptibility within the Mornington Peninsula are also areas covered by the BMO or are otherwise prone to bushfire. The inability under the current form of the BPEs to consider landslip susceptibility in the application of those exemptions renders the planning controls, even with a comprehensive EMO or landslide susceptibility overlay, unable to properly address the prevention and management of landslides and landslips in Victoria.
19. The Shire submits that **cl 52.12 should be amended to integrate consideration of landslide and landslip susceptibility in the application of the BPEs, such that cl 52.12 does not automatically displace dedicated planning controls for the prevention and management of landslides and landslips, such as EMO schedules (or a landslide susceptibility overlay).**

4. An interim EMO

20. The Shire acknowledges the importance and urgency of adopting a formal EMO schedule that covers

¹³ T41:9–T42:20 (Darren Paul); T131:38–138:10 (Dane Pope).

all areas of the Mornington Peninsula that are susceptible to landslide or landslip.

21. Given the age of the Shire's current landslip susceptibility mapping (prepared by Carno Lane Piper in 2012),¹⁴ any permanent EMO schedule that is introduced into the MPPS to cover areas of landslide or landslip susceptibility within the Mornington Peninsula will need to be supported by updated mapping and an updated risk assessment.¹⁵ The Shire estimates that obtaining this updated mapping and risk assessment will take around 2 years to complete.¹⁶
22. Following this, the Shire estimates that a planning scheme amendment to insert a new EMO schedule based on the updated mapping and risk assessment (or a new landslide susceptibility overlay), pursuant to the process in Pts 2 and 3 of the P&E Act and Pt 2 of the *Planning and Environment Regulations 2015* (Vic), would take at a minimum a further 18 months to 2 years.¹⁷
23. Because of the significant time required to obtain the updated mapping and risk assessment, the Shire has been exploring inserting an interim EMO schedule into the MPPS based on the existing 2012 Carno Lane Piper mapping until the updated mapping and risk assessment can be completed.¹⁸ The Shire is currently seeking geotechnical advice on the scope of the mapping to underpin an interim EMO schedule.¹⁹ If the Shire were to be the planning authority, it estimates that it would take 18 months to 2 years for the interim EMO schedule amendment.²⁰ However, if the Minister for Planning were to be the planning authority for the purposes of such an amendment, this timeline could be substantially reduced, including because s 20(4) of the P&E Act enables the Minister to amend a planning scheme without the need to comply with the notice requirements under ss 17, 18 and 19 of the P&E Act. The Shire estimates that were the Minister to be the planning authority, an interim EMO schedule amendment could be completed in 4 to 6 months.²¹
24. The Shire considers that, given the urgency of adopting an interim EMO schedule, **the Board should recommend to the State that upon request from the Shire, the Minister for Planning should constitute herself pursuant to s 20(4) of the P&E Act as the planning authority for the purpose of inserting an interim EMO schedule amendment into the MPPS.** This will ensure an interim EMO schedule can be adopted quickly.

B. Powers under the Building Act and the Building Regulations

1. Overview of the current powers under the Building Act

25. Where an area of landslide susceptibility is located on private land, the powers of local authorities to prevent and manage landslides on such land are limited.

¹⁴ See: T196:42–46 (David Simon); Second Statement of David Simon dated 17 April 2025 [62]; T784:1–5 (Katanya Barlow); Statement of Katanya Barlow dated 6 June 2025 [59].

¹⁵ Statement of Katanya Barlow dated 6 June 2025 [63].

¹⁶ T783:37–39 (Katanya Barlow); Statement of Katanya Barlow dated 6 June 2025 [63].

¹⁷ T783:37–39 (Katanya Barlow); Statement of Katanya Barlow dated 6 June 2025 [63].

¹⁸ T233:16–T234:2 (David Simon); Second Witness Statement of David Simon dated 17 April 2025 [178]; T792: 1–T793:40 (Katanya Barlow).

¹⁹ T792:43–T793:5 (Katanya Barlow).

²⁰ T783:37–39 (Katanya Barlow); Statement of Katanya Barlow dated 6 June 2025 [42].

²¹ T784:11–19 (Katanya Barlow); Statement of Katanya Barlow dated 6 June 2025 [53]–[54].

26. The *Building Act 1993* (Vic) (**Building Act**) and the *Building Regulations 2018* (Vic) (**Building Regulations**) confer certain limited powers on a Municipal Building Surveyor (**MBS**) that can be used in the prevention and management of landslides and landslips in Victoria. Most relevantly and importantly, these powers consist of:
- (a) the power to make an emergency order;
 - (b) the power to make a building order (following a building notice); and
 - (c) the power to require retaining walls or other means of stabilising soil.
27. Pursuant to s 102 of the Building Act, a MBS can make an emergency order if they are of the opinion that the order is necessary because of a danger to life or property arising out of the condition, use or proposed use of a building, or the land on which building work is being or is proposed to be carried out. Relevantly, an emergency order can direct an owner or occupier to:
- (a) evacuate a building or land within a specified time or times (s 103(1)(a));
 - (b) prohibit any person from entering, using or occupying a building or land for the duration of the order (s 103(2)); and/or
 - (c) require an owner or occupier to within a specified time stop building work or to carry out building work or other work necessary to make the building or land safe or to secure the building or land from access (s 104(1)(b)).
28. Under s 106 of the Building Act, a MBS can cause a building notice to be served on an owner of a building or land on which building work is being or is proposed to be carried out if they are of the opinion that certain circumstances exist, including relevantly, that the building or land or building work on the building or land is a danger to the life, safety or health of any member of the public or of any person using the building or land or to any property (s 106(d)). The building notice may relevantly require the owner to show cause why:
- (a) entry to, or the use or occupation of the building or land should not be prohibited (s 108(1)(a));
 - (b) the owner should not evacuate the building (s 108(1)(b));
 - (c) the owner should not carry out building work, protection work or work required by the regulations in relation to the building or land (s 108(1A)); and/or
 - (d) the owner should not take action that is necessary to remove or to wholly or partially reduce, or to contribute to removing or to wholly or partially reducing a danger to life, safety or health of any member of the public or of any person using the building or land or to any property arising from the building or land or building work on the building or land (s 108(1B)).
29. Section 111(1) of the Building Act empowers a MBS to make a building order after the expiry of the time allowed by a building notice for the making of representations. A building order can require the

same actions that are the subject of the underlying building notice (see: ss 111(3), (4), (5), (5A)).

30. Failure to comply with an emergency order or a building order is an offence (s 118(1), (2)). Where an emergency order or a building order requires work to be carried out and an owner fails to do so, the MBS may cause that work to be carried out (s 121). The costs of carrying out the work may then be recovered from the owner as a debt due to the council (s 123). The MBS may also seek an injunction under s 234E(1), including to require the owner to carry out the work.
31. The Shire's MBS has issued a number of emergency orders, building notices, and building orders in respect of the properties affected by the November 2022 Landslide and the McCrae Landslide in order to mitigate and manage the impact of the landslides.²²
32. Where the MBS considers that the stability of the ground on an allotment or any adjoining property has been or may be adversely affected by any excavation or filling of soil on the allotment, pursuant to reg 119 of the Building Regulations they may require the owner to provide retaining walls or other means of maintaining the stability of soil. Failure to comply is an offence (reg 119(2)).
33. Regulation 133 of the Building Regulations also provides municipal councils with certain powers to address the issue of stormwater drainage. As noted above, saturation of land that is susceptible to landslide or landslip can trigger a landslide, so ensuring proper drainage of such land is fundamental to preventing and managing landslides and landslips. Regulation 133(2) requires an applicant for a building permit for work that includes a stormwater drainage system to obtain from the relevant local council a report indicating the location of the point of discharge of stormwater from the allotment that is either within the allotment or at the allotment boundary. Regulation 133(3) then requires that the design of every stormwater drainage system must be approved by the relevant building surveyor, being either a private building surveyor or the MBS, and that the point of discharge must be consistent with the point of discharge identified in the council report.
34. Despite this, there are a number of limitations on the mechanisms in the Building Act and the Building Regulations described above for preventing and managing landslides and landslips.

2. *Limitations on ability to identify and require an appropriate point of stormwater discharge*

35. The report referred to in reg 133(2) of the Building Regulations only allows a council to identify a point of stormwater discharge up to the allotment boundary—it does not permit the council to nominate a point of discharge beyond the boundary of the allotment. This imposes a significant limitation on the ability of a council to identify an appropriate point of stormwater discharge and appropriately oversee drainage arrangements on land that is susceptible to landslide or landslip.
36. In respect of land that is susceptible to landslide or landslip, the most appropriate advice for discharging stormwater from the land will in almost all cases be that the stormwater drainage system on the land be connected to a nearby kerb and channel, roadsidedrain, stormwater pit or a pipe in the road reserve. This will ensure that stormwater is effectively drained from the land and not

²² See: First Statement of David Simon dated 11 April 2025 [118]–[119], Schedule 1; Second Statement of David Simon dated 17 April 2025 [163]–[165], Schedule 1; Statement of David Kotsiakos dated 13 June 2025 Schedule 3.

permitted to enter other land in the vicinity which is also susceptible to landslide or landslip. However, being council assets, these drainage structures are all located outside the boundaries of private land, and a report requiring connection to them is strictly beyond the scope allowed by reg 133(2).

37. In addition, while reg 133(3) requires that the point of discharge from a stormwater drainage system on private land must be consistent with the point of discharge identified in the council report referred to in reg 133(2), where the relevant building surveyor is a private building surveyor because the application for the building permit was made to a private building surveyor (see Building Act s 3(1)(b) (definition of “relevant building surveyor”)), compliance with that requirement is left to be enforced by the private building surveyor. In such a circumstance, the council will have no oversight of whether its report as to point of discharge has been complied with. This is unsatisfactory, especially where the subject land is in an area of high landslide or landslip susceptibility.
38. The Shire considers that **reg 133(2) should be amended to permit local councils to identify a point of discharge from an allotment that is at a reasonable location beyond the allotment boundary. Further, compliance with reg 133 should be overseen by the local council, rather than by private building surveyors, regardless of the involvement of a private building surveyor.** This will allow councils to ensure that appropriate arrangements for the discharge of stormwater from land in areas of landslide and landslip susceptibility are in place in all cases.

3. ***Limitations on the scope of emergency orders and building orders***

39. The determination by the Building Appeals Board (**BAB**) in *Borghesi v Municipal Building Surveyor for the Shire of Mornington Peninsula* [2025] VBAB 60 has made clear the significant limitations on the power of a MBS to issue emergency orders and building orders insofar as they relate to landslides and landslips in Victoria.
40. Those proceedings concerned a challenge to three orders issued to the owners of 10-12 View Point Road, McCrae in respect of the November 2022 Landslide:
 - (a) Building order BO-004/24 dated 4 April 2024, which required the owners to carry out stabilisation work to the landslip affected land;
 - (b) Building order BO-005/24 dated 4 April 2024, which required the owners to remove all landslip debris from Penny Lane; and
 - (c) Emergency order EO-152/22 dated 18 November 2024, which prohibited entry to and use of the land at 10-12 View Point Road within or beyond 3 metres of the embankment until it had been deemed safe by the MBS.
41. These orders were issued on the basis of the Shire’s interpretation of the provisions of the Building Act above that both an emergency order and a building order could be issued in respect of a danger to life or property arising from land, irrespective of whether building works were being or proposed to be carried out on that land. It was accepted by the Shire that no such works were being or were proposed to be carried out at 10-12 View Point Road at the time the orders were made.

42. The BAB rejected the Shire's interpretation and held that each of the three orders was invalid. In particular, the BAB held that:
- (a) the reference to "land" in s 102(b) of the Building Act "is limited to land 'on which building work is being or is proposed to be carried out'", meaning that an emergency order under s 102(b) can only be issued where building work is being or is proposed to be carried out on land, and not in respect of land in general ([62]-[64]); and
 - (b) the reference to "land" in s 106(d) of Building Act is qualified by the chapeau to s 106 to mean land on which building work is being or is proposed to be carried out, meaning that a building notice under s 106(d) (and a subsequent building order under s 111(1)) can only be issued in respect of land on which building work is being or is proposed to be carried out, and not in respect of land in general ([50]).
43. The upshot of the BAB's determination is that, while the Building Act affords some mechanisms for requiring the evacuation and making safe of land affected by a landslide or landslip, these mechanisms are limited to land on which building works are being or are proposed to be carried out or to buildings that have been affected by a landslide or landslip, such as where the footings of the building have been undermined. In practice, the Shire considers that this also renders the entire scheme of the Building Act, as it pertains to emergency orders and building notices, to be in the vast majority of cases *reactive*. That is, in practice it will generally be the case that only *after* there is a landslide or landslip, and *because* of the landslide or landslip the condition or use or proposed use of a building, or land on which building works are being or proposed to be carried out, presents a danger to life or property, is there a role for the MBS.
44. As a result, where there is no building work being or proposed to be carried out on the land, the power, in the Building Act, to require the evacuation or making safe of land affected by a landslide or landslip is currently limited to circumstances where a building on the land presents a danger to life or property because it has been affected by the landslide or landslip.
45. Furthermore, the Building Act provides very limited power for the MBS to take *pre-emptive* steps to issue building notices or emergency orders to protect against the risk of landslide or landslip—that is, to evacuate a building, or to require works to be done on land or to a building, so as to prevent or mitigate the risk of a landslide or landslip occurring (posed either *by* that land or building, or posed to that land or building, or other land or buildings, or their inhabitants).
46. **This creates a significant gap in the regulatory regime for the prevention and management of landslides and landslips in Victoria,²³ which requires timely legislative intervention to resolve.**

²³ For example, currently, the Shire's MBS would have no power to issue an emergency order or a building order in circumstances like those described in the letter from the Shire to the then Minister for Local Government dated 28 September 2001, referred to at paragraph 18 of the Statement of Katanya Barlow dated 6 June 2025. In that letter the Shire described a property in Rye located on steeply sloping land that had, as a result of actions and inaction by the landowner, become unstable and posed a risk of landslip. There was no building work being or proposed to be carried out on the land at that time, and the danger arose from the land itself, rather than any building on it.

Consideration also needs to be given to the appropriate repository of any broader powers that might be developed for the prevention and management of landslides and landslips.

C. Emergency management

1. Overview of the current emergency management regime

47. The State Emergency Management Plan (**SEMP**), made pursuant to s 60AD of the *Emergency Management Act 2013* (Vic) (**EM Act**), and the Municipal Emergency Management Plan (**MEMP**) prepared for the Mornington Peninsula Shire, made pursuant to s60ADB of the EM Act, each contain mechanisms that are relevant to the management of landslides and landslips in Victoria.
48. The SEMP provides for an integrated, coordinated and comprehensive approach to emergency management at the state level in Victoria. It is supplemented by the MEMP which deals with emergency management arrangements at the municipal level that are not detailed in the SEMP. “Emergency” is defined in s 3 of the EM Act to include “an earthquake, flood, wind-storm or other natural event”, which covers landslides and landslips, and emergency management is defined as the mitigation of, response to and recovery from such events.
49. As required by s 60AE of the EM Act, both the SEMP and the MEMP contain provisions providing for the mitigation of, response to, and recovery from emergencies, and specify the roles and responsibilities of state and municipal agencies.
50. The current version of the SEMP is the Victorian State Emergency Management Plan dated October 2024 (**SEMP 2024**), and the current version of the MEMP is the Municipal Emergency Management Plan 2025-2028 (Version 5.2) dated 15 November 2024 (**MEMP 2025-2028**). The SEMP 2024 identifies five key emergency management phases: mitigation, planning, preparedness, response, and recovery.
51. The mitigation phase covers activities that are necessary to eliminate or reduce the incidence and severity of emergencies, and to minimise their effects. “Table 8: Mitigation activities and agencies for managing Victoria’s significant emergency risks, by emergency” (**Table 8**) identifies the roles and responsibilities of agencies in respect of mitigation based on emergency risk type, including bushfire, earthquake and flood.²⁴ Table 8 does not contain a dedicated allocation of roles and responsibilities for the event of a landslide or landslip.²⁵
52. The response phase concerns the action taken during and in the first period after an emergency to

²⁴ Emergency Management Victoria, “Mitigation” <<https://www.emv.vic.gov.au/responsibilities/state-emergency-management-plan-semp/roles-and-responsibilities/mitigation>>.

²⁵ To the extent that items within other emergency risk types in Table 8 may be relevant to a landslide or landslip, the Shire notes that under “Emergency Risk: Flood” local councils are listed as a participating agency, together with the Department of Transport and Planning and Catchment Management Authorities, against the activity: “Land use planning (strategic and statutory) and building regulations”. The Shire notes that against the activity “Property Modifications” the only entity listed as having responsibility is “Property owners”. So too, under Table 8 “Emergency Risk: Storm” (which may also be relevant to landslide), against the activity “Drainage systems (drainage standards and strategy)” local councils are listed as a participating agency, and against the activity “Buildings compliant to engineering standards (building standards/regulations)” local councils are also listed as a participating agency, together with several other agencies, including the Department of Transport and Planning and the Victorian Building Authority.

reduce the effects and consequences of the emergency on people, their livelihoods, wellbeing and property, and on the environment; and to meet basic human needs. During this phase, the purpose of command, control and coordination arrangements is to ensure sufficient resources are deployed, coordinated and responding to an emergency, and that the consequences of the emergency event are being managed (SEMP 2024: 16). The roles and responsibilities for emergency management during the response stage are set out in "Table 9: Control agencies for response" (**Table 9**), based on the emergency type.²⁶ Table 9 identifies the relevant control agency that is primarily responsible for managing the response to particular emergencies and for establishing the management arrangements for an integrated response to the emergency. In respect of landslides ("Emergency: Natural Event"), the Victorian State Emergency Service (**VICSES**) is the control agency.²⁷ VICSES maintains a State Landslide Hazard Plan,²⁸ the expressed objective of which is to "provide sources of information and to outline the arrangements for ensuring an integrated and coordinated approach to the State's management of landslide events" (State Landslide Hazard Plan: 3).

53. The recovery phase concerns the assisting of persons and communities affected by emergencies to achieve a proper and effective level of functioning (SEMP 2024:31). The roles and responsibilities for emergency management during this phase are set out in Tables 13–18, which identify 4 recovery environments and 14 areas of activity.²⁹ In respect of the "built environment", Table 17 provides that at the municipal level local councils are the recovery lead agency for surveying and making determinations regarding occupancy of damaged residential buildings (when safe to do so). In respect of the "natural environment", Table 18 provides that the relevant land manager is the recovery lead agency for undertaking erosion control on public land to help manage risk to public safety, natural and cultural assets and values, and infrastructure.
54. The Shire considers that the provisions of the SEMP relating to the mitigation, response and recovery phases require revision, as well as the State Landslide Hazard Plan.

2. Update State Landslide Hazard Plan

55. The State Landslide Hazard Plan was last updated on 10 September 2018, and it is now significantly out of date and suffers from a number of deficiencies. In particular, the document contains at page 7, Figure 1 a map showing areas of landslide susceptibility across Victoria. That map is purportedly reflective of landslide susceptibility mapping held by the State of Victoria, developed in 2018. That mapping requires updating. Further, the State Landslide Hazard Plan also does not contain any provisions on mitigation measures that might be taken prior to a landslide to prevent its occurrence.
56. In order to ensure the utility of the SEMP in relation to landslides, the Shire considers that **the State Landslide Hazard Plan should be revised and updated comprehensively, including with**

²⁶ Emergency Management Victoria, "Response" <<https://www.emv.vic.gov.au/responsibilities/state-emergency-management-plan-semp/roles-and-responsibilities/response>>.

²⁷ Statement of Andrew Brick dated 16 July 2025 [7].

²⁸ VicSES, "State Landslide Hazard Plan" <https://www.ses.vic.gov.au/documents/8655930/8998580/State+Landslide+Hazard+Plan+-+Version+1_September+2018_final.pdf/a3a25eed-cca8-2d62-541d-3fc74ff4bf38?t=1621732618115>.

²⁹ Emergency Management Victoria, "Recovery" <<https://www.emv.vic.gov.au/responsibilities/state-emergency-management-plan-semp/roles-and-responsibilities/recovery>>.

updated state-wide landslide susceptibility analysis and mapping.

3. *Including a specific allocation of roles and responsibilities for mitigation for landslides*

57. As noted above, the SEMP 2024 does not expressly refer to landslide or landslip at all in allocating roles and responsibilities for mitigation of such events. The Shire considers that the SEMP 2024 should be revised to resolve this gap, including consistently with the recommendation in Section II.B.3 above.

4. *Revising approach to response and recovery phases in respect of landslides*

58. The Shire considers that there should be reconsideration of how the SEMP and the state emergency management arrangements operate in respect of landslides of all magnitudes in light of the response to the McCrae Landslide.
59. In particular, the Shire submits that there is currently insufficient clarity in the SEMP as to the transition from the response phase to the recovery phase, especially in the context of slow onset emergencies such as landslides.
60. Transfer to recovery (TTR) is the point at which control is transferred from the control agency to the Municipal Recovery Manager, which in the case of municipal recovery coordination is the local council.³⁰ The SEMP contains limited direction on the timing and conditions for TTR to occur. This can lead to operational inefficiencies, a failure of coordination between agencies, and delays in recovery efforts. Ultimately, this hinders effective management of the emergency.
61. For example, following the 14 January 2025 Landslide, VICSES sought to transfer control of the site to the Shire and control of Point Nepean Road to the Department of Transport and Planning within 48 hours. No rationale was provided that the existing exclusion zone was sufficient or that there was no potential for a further landslide that may affect sites outside of the exclusion zone. This attempt to trigger TTR proved to be premature, because further evacuations of the site needed to be undertaken on 17 January 2025 and the Shire was not in a position to assume recovery coordination.
62. The Shire considers that the SEMP be amended to include:
- (a) clear criteria for triggering TTR, to be mutually agreed between the relevant agencies;
 - (b) a formal handover protocol between control agencies and recovery coordinators; and
 - (c) specific guidance for slow-onset emergencies such as landslides
63. These amendments will ensure effective coordination between state and local agencies, that recovery efforts only commence once the response phase is complete or appropriately scaled down, and that councils can adequately prepare for their recovery responsibilities.

³⁰ Emergency Management Victoria, "Recovery" <<https://www.emv.vic.gov.au/responsibilities/state-emergency-management-plan-semp/roles-and-responsibilities/recovery>>.

64. Further, as outlined in **Section II.B.3** above, local councils have only very limited (and no specific) powers in respect of the management of landslides. Pursuant to the Building Act, a MBS can make emergency orders and building orders for the evacuation and making safe of land affected by a landslide or landslip, but only where there is a danger posed by a building on the land, or by the land itself and there is building work which is being or proposed to be carried out on that land. While Tables 17 and 18 are consistent with this, as noted above this leaves a significant regulatory gap where land has been affected by a landslide or landslip but there is no building that presents a danger or no building work that is being or proposed to be carried out on the land.
65. As set out above at **Section II.B.3**, the Shire submits that this regulatory gap needs to be resolved by legislative intervention. **The SEMP recovery arrangements should also be updated in line with the legislative action taken.**

D. Information sharing on landslide and landslip susceptibility and risk

66. Currently, there are few mechanisms for aggregating and disseminating information about the landslide or landslip susceptibility and risk of particular land in Victoria.
67. While a formal EMO schedule or dedicated landslide susceptibility overlay based on updated state-wide mapping (as recommended in **Section II.A.2** above) would increase the publicly available information about landslide and landslip susceptibility across Victoria, the Shire submits that, in addition, **the State should establish and fund a public database, to which access is permitted free of charge or at a low fee, that includes records of geotechnical tests and landslide risk assessments undertaken in Victoria.**
68. A similar database in New Zealand is funded by the Natural Hazards Commission Toka Tū Ake, called the New Zealand Geotechnical Database (**NZGD**). The NZGD is a comprehensive searchable online database that brings together in one location new and existing geotechnical studies and information on land across New Zealand. Researchers, councils, engineers and developers in New Zealand can become part of the NZGD and upload geotechnical tests and access the results of geotechnical tests commissioned by others. The database provides the ability for a deeper understanding of the geotechnical conditions of particular land to be readily attained, which enhances decision-making relating to the use of that land (by state agencies, property owners, and prospective purchasers) and may undergird public education on landslide risk.
69. The Shire submits that **a State funded and operated geotechnical database like the NZGD, should include, at a minimum any geotechnical or landslide risk assessments undertaken for state agencies or local councils (for example, the 2018 Department of Economic Development, Jobs, Transport and Resources Landslide Susceptibility mapping referenced in the State Landslide Hazard Plan), and any geotechnical assessments submitted by private property owners in connection with development applications. The database could also invite the voluntary uploading of geotechnical or landslide risk assessments obtained by other parties in other circumstances.**

E. Public education on landslides and landslips

70. There are currently limited education programs provided in Victoria to promote awareness of landslide or landslip risk in areas susceptible to these events³¹
71. The education of landowners and potential purchasers of properties about landslide and landslip risk is fundamental to the prevention and management of landslides and landslips in Victoria, given the limited powers of public authorities to intervene on private land. Educating landowners and potential purchasers of properties in areas of landslide or landslip susceptibility will enable them to make appropriate and effective decisions to mitigate landslide or landslip risk, and also ensure that they are prepared for and take life preserving action when landslides and landslips do occur.
72. The Shire considers that, given that landslide or landslip risk is not an issue that is limited to the Mornington Peninsula, **the State should fund and develop an education campaign for owners and potential purchasers of land in areas of high and medium landslide or landslip susceptibility across Victoria.**
73. **The contents of such an education program should include:**
- (a) **information about the causes of landslides and landslips;**
 - (b) **how to mitigate and manage the causes of landslides and landslips, including:**
 - (i) **appropriate water use and management of water on and near the land;**
 - (ii) **appropriate retention and propagation of vegetation, including large gum trees;**
 - (iii) **minimising disturbance to the land through building activities;**
 - (c) **planning for the occurrence of a landslide or landslip (e.g. evacuation plans);**
 - (d) **information on how to monitor land for early signs of a landslide or landslip;**
 - (e) **directions on the appropriate authority to whom the occurrence of a landslide or landslip on private land should be reported; and**
 - (f) **what to do following a landslide or landslip.**
74. The delivery the public education program could occur through a dedicated webpage on landslides and landslips (including updating the VICSES webpages on landslides),³² the preparation of written materials to be disseminated including through local councils, and/or an advertising campaign.

MinterEllison

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³¹ The Shire notes that in respect of Mitigation under the SEMP, while Table 8 does not expressly identify landslide, under the heading "Emergency Risk: Flood" the activity "Community engagement, education and awareness" falls to VICSES, as well as the Department of Health and the Bureau of Meteorology; separately, under the heading "Emergency Risk: Storm", the activity "Community engagement, education and awareness" falls solely to VICSES.

³² See: VICSES, Know your hazards – Landslides" <<https://www.ses.vic.gov.au/know-your-hazards/landslide>> and "Landslides - Take action and stay safe"<<https://www.ses.vic.gov.au/plan-and-stay-safe/emergencies/landslide>>.