

AMENDMENT C217 EROSION MANAGEMENT OVERLAY PANEL RECOMMENDATIONS AND CONSIDERATION FOR ADOPTION

Report Author: Executive Officer Strategic Planning
Responsible Officer: Director Planning & Sustainable Futures
Ward(s) affected: (All Wards);

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

Amendment C217 proposes to amend the Yarra Ranges Planning Scheme to update the schedule to the Erosion Management Overlay and include the Incorporated Document '*Requirements for a Geotechnical Assessment, Landslide Risk Assessment or Landslide Hazard Assessment prepared in support of a planning permit application under the Erosion Management Overlay (EMO1)*' in the Planning Scheme.

The amendment was placed on public exhibition from 22 June to 27 July 2023 with a total of 12 submissions received. Of those, two submissions supported the amendment, six submissions supported the amendment and requested changes, one submission neither supported the amendment or suggested any changes, one submission opposed the amendment and two submissions stated they had no objection to the amendment.

At the Ordinary Council meeting of 12 September 2023, Council resolved to refer submissions to an Independent Planning Panel appointed by the Minister for Planning.

The Panel hearing was held on 23 October 2023. The Panel has now provided its report and recommendations to Council.

The Panel has recommended that Amendment C217 be adopted, as exhibited subject to changes as outlined in the Panel report. A copy of the panel report is at Attachment 1. Officers have assessed and responded to the Panel's recommendations with a final recommended position for consideration (Attachment 2).

This report recommends that Council adopt Amendment C217 in accordance with some of the Panel's recommendations and generally in accordance with the changes recommended in Attachment 2 and Attachment 4.

RECOMMENDATION

That Council

- 1. Note the recommendations of the Panel Report.**
- 2. Adopt Amendment C217 to the Yarra Ranges Planning Scheme with changes generally in accordance with the changes discussed in Attachment 2 and shown in Attachment 4.**
- 3. Submit Amendment C217 to the Minister for Planning for approval.**
- 4. Write to submitters advising of the outcome of Council's decision.**

RELATED COUNCIL DECISIONS

At the Ordinary Council meeting of 9 June 2023, Council resolved to:

- Request the Minister for Planning to authorise the preparation and exhibition of Amendment C217 to update the schedule to the Erosion Management Overlay and include the Incorporated Document '*Requirements for a Geotechnical Assessment, Landslide Risk Assessment or Landslide Hazard Assessment prepared in support of a planning permit application under the Erosion Management Overlay (EMO1)*' in the Planning Scheme.
- Subject to the Minister's authorisation, exhibit Amendment C217 to the Yarra Ranges Planning Scheme.
- Receive a further report considering submissions following exhibition of the amendment.

At the Ordinary Council meeting of 12 September 2023, Council resolved to:

- Note the matters raised in submissions to Amendment C217.
- Note the changes proposed to be made to the Amendment in response to submissions.
- Request the Minister for Planning to appoint an Independent Planning Panel under section 23 of the *Planning and Environment Act 1987*, to consider unresolved submissions to Amendment C217.
- Write to all submitters advising them of Council's decision to refer the submissions to a Panel.

DISCUSSION

Purpose and Background

Purpose

The purpose of this report is to discuss the recommendations of the Planning Panel and to recommend adoption of Amendment C217 with changes.

Background

Erosion Management Overlay

Landslide management was first implemented by the former Shire of Lillydale in the early 1990's through changes to the planning scheme in response to property destruction caused by landslides through the 1980's and early 1990's. The forerunner to the current Yarra Ranges EMO was implemented in 2001 and was based on historic mapping undertaken using topographic information available at the time, mostly 1960's Melbourne Metropolitan Board of Works (MMBW) contour plans and through viewing aerial photography.

In December 2009, Amendment C40 to the Yarra Ranges Planning Scheme replaced the schedule to the EMO introduced in 2000, by including an updated landslip risk assessment process which enabled the consideration of development on land with serious risk characteristics. The objectives, decision guidelines, exemptions and information requirements were also updated to include more detail. One of the key changes was that geotechnical assessments submitted with a planning application had to be prepared by practitioners with a specified level of experience and expertise.

Since the EMO Schedule was introduced in 1999, and further updated in 2009, there have been advances in the accuracy and methodology of landslide risk assessment in Australia. Notably the development of the Australian Geomechanics Society guidelines (AGS 2007), recent precedents of other Council EMO schedules being Council Meeting Agenda 12.09.23 updated to reflect the AGS 2007 criteria, and technology developments, particularly high-resolution 3D scanning of topography (LIDAR). It is imperative that Yarra Ranges, as one of the most significant EMO areas in Victoria, now review and update the overlay and schedule to align with these improvements. There is also an obligation under the Planning and Environment Act 1987 to keep controls up to date, with this proposed Amendment achieving this outcome for the EMO.

Storm Event June 2021

The storm event of June 2021 damaged and destroyed many dwellings in Yarra Ranges, some because of landslip associated with the storm. It was identified at that time that there was a need to review and update landslip and debris flow risks in Yarra Ranges, especially considering the increased landslip risks arising from significant loss of trees which offer a degree of stabilisation to the soil. According to information collated by Council's Rebuilding Support Service (RSS), the storms were

destructive and caused 71 properties to be uninhabitable and a further 51 properties were damaged but still habitable.

Council requested financial assistance to assist with several matters arising from the storm event including the need to bring forward a review the EMO due to changed land conditions. Council received \$300,000 in grant funding under the National Recovery and Resilience Agency’s Preparing Australian Communities Program – Local to prepare the review of the EMO in Yarra Ranges.

Council engaged an expert Geotechnical consultant to review and advise on changes required to the EMO in the Yarra Ranges Planning Scheme. The report also considers the potential impacts of climate change on landslip susceptibility and how this can be factored into decision-making.

The report was considered by Council at the Council Meeting on 9 June 2023 and recommended that changes to the current EMO schedule are required to make it more streamlined and user friendly and that the risk provisions in the schedule are consistent with the guidance provided in the AGS 2007 (Australian Geomechanics Society Practice Note Guidelines for Landslide Risk Management). The proposed changes are discussed further below.

Amendment C217

Amendment C217 proposes to amend the current EMO schedule to make it more streamlined and user friendly and make the risk provisions in the schedule consistent with the guidance provided in the AGS 2007 (Australian Geomechanics Society Practice Note Guidelines for Landslide Risk Management).

The changes proposed to the EMO planning scheme provisions in the Planning Scheme are (in summary):

Table 1: Proposed Provisions

Provision	Change	Benefit
EMO Schedule 1: Permit Exemptions	An expansion of the planning permit exemptions for minor buildings and works and vegetation removal in the schedule.	Revise exemptions for minor or essential development for which landslide risks are typically, low or where society benefit clearly outweighs landslide risk.
	Introduction of discretionary clauses in the schedule to enable Council to exempt applications for cases where the community benefit outweighs landslide risk or where delaying works could be detrimental to slope stability.	Avoid delaying essential, beneficial work.
EMO Schedule 1: Subdivision Provisions	Developing separate requirements in the schedule for subdivision applications compared to new buildings and works.	Allows appropriate information to be provided and better informs assessment of applications within the EMO.
EMO Schedule 1: Tolerable Risk Criteria	Amending the tolerable risk criteria from Low to Medium for some structures such as houses and sheds. Further	Consistency with AGS 2007 Guidelines to provide a clear decision basis.

Provision	Change	Benefit
	explanation is provided below.	Allows risk threshold requirements to be consistent with importance of structure.
Incorporated Document	Simplification of the EMO schedule by relocating technical content intended for use by geotechnical practitioners to an Incorporated Document.	Simplify the EMO by removing technical jargon.

Reconsideration of risk to property criteria

The most significant change proposed by the amendment is to amend the risk to property criteria in the current EMO schedule, which currently requires an applicant to demonstrate low or very low risk to property to any development whether it be a garden shed or a hospital.

The report recommends that the criteria be amended from low to medium to bring the risk criteria into alignment with the industry standard AGS Guidelines (2007) which has also been adopted and included in other Planning Schemes (like Colac Otway).

Changing the risk criteria means that greater risk would be tolerated for lower impact structures. For example, a greater level of risk to a residential dwelling or farm shed could be tolerated compared to critical infrastructure such as a school or hospital.

Adoption of the criteria set out in the AGS 2007 Guidelines would require typical residential development to demonstrate at most a Moderate risk to property, which would also mean that there would be increased opportunities for development including the building of dwellings or dwelling extensions (subject to a planning permit) which is not currently possible.

The acceptance of a different risk criteria is discussed further below under Risk Assessment.

Key Issues

Submissions

A total of twelve submissions were received in response to the amendment exhibition. A summary of submissions is at Attachment 3.

Planning Panel Request

Section 23 of the *Planning and Environment Act 1987* states that after considering a submission which requests a change to the amendment, the planning authority must:

- Change the amendment in the manner requested; or
- Refer the submission to a panel appointed under Part 8; or
- Abandon the amendment or part of the amendment.

Given that two submissions raised matters that could not be resolved, Council resolved on 12 September 2023, to refer the Amendment and submissions to an independent Planning Panel appointed by the Minister for Planning.

A Planning Panel provides Council and all submitters with an opportunity to have the amendment proposal and matters raised within submissions further considered. Following the completion of the Panel, which generally includes a hearing, the Panel will provide a report to Council with its recommendations for consideration. The Panel Report has been received and key issues raised will be the main focus of this report.

The key function of a Panel is to consider issues raised in submissions, however it may take into account any matter it thinks is relevant. In adopting an amendment Council must set out its reasons if it does not agree with any of the Panel's recommendations.

Planning Panel Hearing

The Minister for Planning formally appointed a one-person Panel on 13 September 2023.

A Directions Hearing was held by video conference on 25 September 2023.

The formal Panel Hearing was held by video conference on 23 October 2023. Council called Mr Darren Paul of WSP Golder as an expert witness.

Key issues addressed by the Panel during the hearing were whether:

- The current EMO should be removed from 3 Johnston Parade and 4 Oberon Avenue, Ferny Creek.
- An exemption should be provided to rebuild a damaged or destroyed building where there is evidence that the land is stable.
- The planning provisions are clear and practical.

Panel Report

The Panel submitted its report to Council on 16 November 2023 (Attachment 1).

The Panel supports the amendment and concluded that:

- It is satisfied that the Amendment is strategically justified and delivers net community benefit and sustainable development as required by Clause 71.02-3 (Integrated decision making) of the Yarra Ranges Planning Scheme.
- The Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework.
- The Amendment is well founded and strategically justified and that it should proceed subject to addressing the more specific issues raised in submissions as discussed in the Panel Report.

- It would be premature to take parcels out of the current EMO without detailed geotechnical investigations to inform revised mapping.
- It is appropriate that a planning permit is required to reconstruct damaged buildings to ensure landslide risks are properly assessed against current site conditions.
- Substantial redrafting of the proposed Erosion Management Overlay Schedule 1 is required to ensure provisions are clear and practical and comply with *Ministerial Direction 1: The Form and Content of Planning Schemes and the Practitioner's guide to Victoria's planning schemes, Version 1.5, April 2022*.

Panel Recommendations and Response

The Panel recommends that Yarra Ranges Planning Scheme Amendment C217 be adopted as exhibited subject to the following changes.

The recommendations are discussed in detail in Attachment 2 with an officer response and recommended position. In Summary:

Recommendation 1

Amend the labelling of the Erosion Management Overlay maps from 'EMO' to 'EMO1'.

It is considered this is unnecessary and would cause confusion given the amendment did not propose any mapping changes. The re-labelling of the maps can be addressed through a future planning scheme amendment.

Officers have sought advice from the Department of Planning (DTP) on the Panel's recommendation. DTP has advised it is not necessary to amend the maps to label them EMO1 as part of Amendment C217.

It is recommended that Council do not support the Panel recommendation.

Recommendation 2

Amend the Erosion Management Overlay Schedule 1 as shown in the Panel preferred version in Appendix D (Attachment 1 to this report) to:

- a) Under Clause 2.0, delete policy guidance content.
- b) Under Clause 3:
 - include a permit requirement for a fence and exempt open masonry fencing and timber, wire and aluminium fencing;
 - include a permit requirement for a rainwater tank and domestic swimming pool or spa;
 - standardise the capacity of water holding structures not requiring a permit to 5,000 litres;

- delete the permit exemption for retaining walls constructed to provide support to existing unsafe earthworks;
- delete the permit exemptions for repair and routine maintenance; and
- amend the permit exemption for vegetation removal to vegetation with a circumference of 0.5 metres measured at 1.3 metres above ground level.

c) Under Clause 4.0:

- consolidate application requirements for specific types of application; and
- revise the application requirement waiver.

The response to the recommended changes to the EMO schedule are summarised and discussed below with more detail provided in Attachment 2.

Recommendation	Issue raised by Panel	Recommendation
2a) Delete policy guidance from Clause 2.0	See response to Recommendation 3 below	Not support
2b) Fences	The Panel did not support the use of the term 'other lightweight fencing' as it lacks the specificity required for a permit exemption.	Support Support the removal of the term other lightweight fences from the EMO schedule.
2b) Rainwater tanks	The Panel concluded that the proposed permit exemptions for water holding structures are generally appropriate, subject to changes to scheduling in permit requirements that are otherwise exempt under Clause 62.02-2.	Support
2b) Water holding structures	The Panel recommend standardising the capacity of impervious water holding structures not requiring a permit to 5,000 litres to ensure consistency with Australian Standards.	Support with changes Support the Panel's recommendation that the permit requirements under the Schedule to the EMO can be further adjusted to make this clearer. The recommended wording that has been discussed with Council's geotechnical consultant is

Recommendation	Issue raised by Panel	Recommendation
		included in Attachment 2 and 4. Note Council's preferred wording of the Schedule.
2b) Retaining Walls	See discussion below	Not support
2b) Vegetation removal	The Panel concluded that the proposed permit exemption for vegetation removal is generally appropriate, subject to changes to make the exemption clear so that it can be practically applied.	Support Support the recommendation as there was a drafting error in exhibited EMO schedule.
2b) Repair and routine maintenance	The Panel concluded that repair and routine maintenance have not been demonstrated to increase the risk of landslip. It recommended that permit exemptions for repair and routine maintenance provided by Clause 62.02-2 Buildings and Works exemptions should remain without local variation.	Support Support the removal of routine maintenance from the EMO Schedule as these types of works are already exempted under Clause 62.02-2.
2c) Consolidate application requirements for specific types of applications	The Panel recommended amending the Erosion Management Overlay Schedule, Clause 4.0 to consolidate application requirements for specific types of applications. The Panel prefers that the application requirements for specific development types (buildings and works, and subdivision) are consolidated into a logical list so they can be easily understood by landowners and practitioners.	Support with changes The changes proposed by the Panel are generally supported with a proposed change to the application requirement for a geotechnical assessment that has been redrafted to make it clear if it applies to buildings and works or subdivision (or both) without referring to the proposed Incorporated Document. The proposed wording is set out in Attachment 4.
2c) Revise the application requirement waiver	The Panel recommended that the proposed application requirement waiver is generally appropriate, subject to replacing the exhibited text with the standard waiver used in the	Support with changes As the EMO manages a potential risk to life and property, it is unlikely that the application requirements would

Recommendation	Issue raised by Panel	Recommendation
	Victoria Planning Provisions to ensure consistency across the Planning Scheme.	be waived very often however the Panel prefers the use of the generic Victoria Planning Provisions wording for the proposed waiver provision to maintain consistency across the Planning Scheme. The proposed wording is set out in Attachment 4.

Retaining Walls

The Panel expressed concern about whether the proposed permit exemptions, particularly for fencing and retaining walls are clear. Submission 9 also sought clarification on whether all four permit exemption requirements (rather than any of the four) must be met for a retaining wall to be exempt from a planning permit.

Following the exhibition period, Council acknowledged that the retaining wall exemptions could have been made clearer, because the exemption from a planning permit to construct a retaining wall or provide slope retention which is specifically intended to provide support to and rectify existing unsafe earthworks; was intended to be a stand-alone exemption.

The Panel accepted Council's geotechnical expert's evidence that allowing the development of a retaining wall designed to mitigate or reduce a pre-existing landslip hazard will encourage remediation of existing hazardous earthworks. However, the Panel was not satisfied that the drafting of the exemption is sufficiently clear to enable its consistent application. In particular, the Panel felt that the exemption requires a decision maker to form an opinion about the meaning or extent of the term 'unsafe earthworks'.

The panel suggest that if the intent is to allow the repair of damaged structures, it is likely this could be achieved under general exemptions for repair and routine maintenance under Clause 62.02-2, negating the need for a specific exemption.

Officers have sought the advice of Council's geotechnical expert who has advised that an exemption of this type should be retained in the Schedule to the EMO as exhibited, as this is found to provide a useful incentive for the mitigation of unsafe works.

Given that there were no permit requirements for earthworks prior to 2001, there is a higher likelihood that these earthworks over time may need to be safely remediated. By specifying that the exemption (in this particular case) applies to earthworks which were undertaken prior to 2001, makes the exemption clear.

It is suggested that rather than remove the exemption, or rely on Clause 62.02-2, Council seek to further explain by including the following wording in the schedule which also addresses the Panel's concern regarding clarity on this matter:

A retaining wall or slope retention to support existing earthworks provided the earthworks were undertaken prior to 2001.

Other Schedule Changes

The Panel has provided their preferred version of the EMO Schedule. This has been reviewed by Council's Geotechnical expert who is also a practitioner. He has advised that the Panel's recommended changes in Section 3.0 'Permit Requirement' that split what does and what does not require a planning permit, does not work well in practice as it is not possible to include a comprehensive list of all buildings and works that might require a permit.

It is preferred that the schedule specify that all new buildings and works and subdivision require a planning permit unless they are specifically exempted. This approach also provides greater clarity for a statutory planning officer who will need to understand how to use the Schedule, as well understand what does and does not require a planning permit when advising customers. The changes to the Schedule are set out in Attachment 4 and are consistent with the exhibited version of the schedule; with the changes which are agreed to from the Panel's preferred version. The Panel's preferred version of the Schedule is contained as an appendix to the Panel Report.

Recommendation 3

Insert a new local policy in Clause 13.04-2S (Erosion and landslip) as shown in the Panel preferred version in Appendix E (Attachment 1 to this report).

The Panel in making this recommendation considered that the inclusion of an explanation of what 'tolerable risk' means as well as the inclusion of Table 1 – 'Maximum tolerable risk to property' is not appropriate to include in Clause 2.0 Statement of Risk in the EMO schedule, and that this information should be redrafted as a local policy under Clause 13.04-2S (Erosion and Landslip).

The Panel considered that the exhibited drafting of Clause 2.0 is much more than a Statement of Risk and contains elements of a 'requirement' or a 'policy guideline'.

It is considered that the Statement of Risk should remain within the Schedule to the EMO. Placing the Statement of Risk in a policy as a discretionary policy guideline that does not need to be given effect, is not appropriate in this instance.

The tolerable risk requirements to be achieved for new development are not discretionary (as they must be in accordance with the Australian Geomechanics Society Practice Note Guidelines for Landslide Risk Management 2007). One of the main purposes of Amendment C217 was to enable a change to the tolerable risk criteria from very low/low to medium.

In addition, separating the Statement of Risk from the Schedule will likely create confusion for planning scheme users. The retention of the explanation of tolerable risk in the Schedule is also consistent with the EMO schedule in the Colac Otway Planning Scheme.

As further discussed in Attachment 2 the placement of the statement of risk as a policy guideline in a local policy is also contrary to advice within the *Practitioners Guide to Victorian Planning Schemes, Version 1.5, DELWP, April 2022* that states that in most instances, specific (often numerical) requirements can be included in a schedule to a zone or overlay.

Officers have sought advice from the Department of Planning (DTP) on the Panel's recommendation. DTP has advised it generally supports Council's position that a local policy is not required and that the Statement of Risk should remain in the EMO schedule. DTP will further consider this matter when the amendment is submitted for approval.

It is recommended that Council do not support the Panel recommendation.

The Panel also recommended that Table 1 Maximum tolerable risk be amended to use land use terms consistent with those in Clause 73.03 Land use terms of the Planning Scheme.

It is recommended that Council support this recommendation and amend the land use terms in accordance with the Panel's recommendation. The amendments to Table 1 are included within Attachment 4.

Recommendation 4

Amend Clause 72.02 Schedule (Documents Incorporated in this Planning Scheme) to include:

- Guidelines for Landslide Susceptibility, Hazard and Risk Zoning for Land Use Planning, Journal of Australian Geomechanics Society, Volume 42: No 1, March 2007.
- Practice Note Guidelines for Landslide Risk Management 2007, Journal of Australian Geomechanics Society, Volume 42: No 1, March 2007.

The Panel in making this recommendation considered that the requirements in the EMO schedule cannot be properly understood without the reference documents. The reference documents are therefore examples of external documents that are essential to the administration of the Planning Scheme and on this basis, they should be incorporated into the Planning Scheme.

It is considered that if the full documents were incorporated into the Planning Scheme, and that if these Guidelines were updated in the future, the planning scheme would need to be amended to replace the current versions and may mean that outdated versions of the guidelines are being used rather than the latest version.

The documents in their entirety are able to be accessed online. Following approval of the amendment, a link to the documents will be provided on Council's website.

Officers have sought advice from the Department of Planning (DTP) on the Panel's recommendation. DTP has advised that it is not appropriate or necessary to incorporate Australian Standards in the Planning Scheme.

It is recommended that Council do not support the Panel recommendation.

Recommendation 5

Amend Clause 1.0 of the Incorporated Document '*Requirements for a Geotechnical Assessment, Landslide Risk Assessment or Landslide Hazard Assessment prepared in support of a planning permit application under the Erosion Management Overlay*' to replace 'Registered Professional Engineer (RPEng)' with 'Registered Professional Engineer, Victoria registered under Part 2 of the *Victorian Professional Engineers Registration Act 2019*'.

It is considered that this will improve clarity and the recommendation is supported.

Panel Response to Submissions

The Panel also considered and made findings in relation to submissions that requested changes to the Amendment.

Submission 2

The submitter suggested that Council should be doing more to require individual landowners to manage large trees at risk of falling.

The Panel found that this matter is beyond the scope of Amendment and did not further address it.

Submission 3

The submitter sought a change to the amendment to include an exemption to rebuild a damaged or destroyed building, where there is evidence that the land is stable and where it can be demonstrated that landslip has not occurred for an extended period (for example over 50 years).

The Panel that a permit exemption should not apply for rebuilding a destroyed building based on its age. Clauses 52.10 and 63.10 are the State provisions relating to destroyed and damaged buildings. Both require planning permits to be obtained to develop land where an existing building is significantly damaged or destroyed.

Submission 6

The submitter suggested Council undertake road and drainage works to complement the Amendment.

The Panel found that this matter is beyond the scope of Amendment and did not further address it.

Submission 7

The submitter requested the current EMO be removed from properties at 3 Johnston Parade and 4 Oberon Avenue, Ferny Creek for reasons including that they are not subject to erosion or landslip risk.

The Panel found that as the amendment does not propose to revise the mapping of the overlay it would be premature to take parcels out of the current EMO without detailed geotechnical investigation. The Panel found that observations of the land owner cannot be relied upon to support a change in mapping.

Submission 9

The submitter sought clarification regarding whether aluminium is an appropriate lightweight fencing material that should be specifically listed in the fencing exemptions in the EMO schedule.

The Panel concluded that the proposed permit exemption for aluminium fencing is appropriate.

It is considered the Panel's recommendation should be accepted and the EMO schedule amended to make this change.

Submission 11

The submitter considered the list of geotechnical practitioners listed in the Incorporated Document should be expanded to include Victorian Registered Engineers with suitable experience.

The panel concluded that the list of geotechnical practitioners should be expanded to include 'Registered Professional Engineer, Victoria'.

It is considered the Panel's recommendation should be accepted and the Incorporated Document amended to make this change.

Other submissions which were in support of the Amendment, however needed to seek clarity, particularly with respect to proposed permit exemptions for fencing, retaining walls, water holding structures, including rainwater tanks, have also been addressed by the Panel.

Options considered

Option 1

Adopt the amendment with changes in accordance with the Panel's recommendations, as shown in the Panel report at Attachment 1.

While enabling the progression of the Erosion Management Overlay Amendment is a high priority, not all of the Panel's recommended changes are appropriate as discussed above and will compromise the integrity and operation of the EMO schedule. This option is not recommended.

Option 2

Adopt the amendment with some of the changes recommended by the Panel as discussed above and in Attachment 2.

In adopting an amendment contrary to any of the Panel's recommendations, Council must advise the Minister for Planning of the reasons why the recommendations have not been accepted or have been partially accepted.

Officers accept that some of the Panel's recommendations are reasonable and have merit, however not all of the Panel's recommended changes are appropriate as discussed above and will compromise the integrity and operation of the EMO schedule. Hence this option is recommended.

Option 3

Abandon the Amendment. If the updates to the Erosion Management Overlay were not pursued, Council would be failing in its obligations under the *Planning and Environment Act 1987* and the Yarra Ranges Planning Scheme to keep the scheme up to date. This option is not recommended.

Recommended option and justification

It is recommended Option 2 be pursued and that the Amendment be adopted with changes in accordance with the changes discussed in Attachment 2 and shown in Attachment 4.

FINANCIAL ANALYSIS

Council has received \$300,000 in grant funding under the National Recovery and Resilience Agency's Preparing Australian Communities Program – Local (PAC) which has been partly used to fund a review of the EMO by a geotechnical consultant, obtain the relevant LiDAR data, and the cost of a strategic planner to project manage the review and planning scheme amendment preparation.

The costs associated with a Planning Scheme Amendment would also be funded through the PAC funding.

This includes the costs associated with engaging a geotechnical consultant in reviewing submissions and appearing as an expert witness at a Planning Panel and the costs associated with the Planning Panel.

APPLICABLE PLANS AND POLICIES

This report contributes to the following Council strategies and plans:

- Council Plan (2021-25): Quality Infrastructure and Liveable Places;
- Municipal Recovery Plan Pandemic and Storm Recovery, 2022;

- Yarra Ranges Planning Scheme:
 - Clause 44.01 Erosion Management Overlay the purpose of which is to protect areas prone to erosion, landslip, other land degradation or coastal processes by minimising land disturbance and inappropriate development, and
 - Clause 52.10 Reconstruction After an Emergency the purpose of which is to:
 - To facilitate the reconstruction of buildings and works damaged or destroyed as a result of an emergency;
 - To facilitate the re-establishment of businesses and services after an emergency; and
 - To facilitate the continued use of land for dwellings after an emergency.

RELEVANT LAW

The proposed planning scheme amendments has been prepared in accordance with the legislative requirements of the *Planning and Environment Act 1987*.

SUSTAINABILITY IMPLICATIONS

Economic Implications

The amendment is not expected to have significant adverse economic effects. Inclusion of a site within the EMO generally does not prohibit changes to that site or buildings, but rather requires an application process whereby landslip can be considered and responded to appropriately.

Social Implications

The proposed changes to the planning scheme will make it clear to residents and the community what the intended outcomes are for properties impacted by an EMO.

Environmental Implications

The primary environmental implication of the proposed changes will be to manage the risk of landslip in the affected areas of Yarra Ranges.

COMMUNITY ENGAGEMENT

The amendment was placed on public exhibition for a month from 22 June to 27 July 2023 in accordance with the statutory requirements under the *Planning and Environment Act 1987*. Notification comprised:

- Notices published on 20 June 2023 in all local newspapers which circulate in the Yarra Ranges Local Government area;
- Letters sent by mail to all property owners and occupiers who are affected by the Erosion Management Overlay;
- Letters to relevant government agencies and departments;
- Notice published in the Government Gazette on 22 June 2023; and
- Information provided on Council's and the Department of Transport and Planning's websites.

In addition, an online information webinar was held on 26 June 2023 that included Council officers and a geotechnical engineering consultant on the panel.

The webinar was available for residents to view in a live setting and 27 people joined the webinar. The panel provided answers to questions following a slide show presentation of landslide issues and the proposed changes to the EMO. The webinar has since been recorded and is available on Council's Amendment C217 webpage.

Detailed frequently asked questions (FAQs) and answers were also added to Council's website, many of which were in response to the main questions asked by residents over the exhibition period.

Throughout the exhibition period, more than one hundred phone calls were received regarding the planning scheme amendment.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Amendments to the EMO planning scheme controls will contribute towards continuous improvement of the Yarra Ranges Planning Scheme by accurately reflecting landslip risks to appropriately guide land use and development.

RISK ASSESSMENT

One of the primary intentions of an EMO is to identify land that is susceptible to landslip and debris flow to reduce the associated risk to property and human life as a direct consequence.

The proposed changes to the EMO seek to bring Council's EMO schedule into line with the Australian Geomechanics Society Guidelines for Landslide Risk Management, AGS 2007 which recommends that greater risk can be tolerated for less 'important' structures (i.e.: a greater level of risk to a dwelling could be tolerated compared to a school or hospital).

To date there has been one measure of risk for all developments, with the current EMO requiring risk be low in all circumstances, which is more conservative than what other councils with an EMO control have adopted in their planning scheme

(Colac-Otway for example). Some Councils with limited EMO areas do not specify tolerable risk levels at all.

The review of the EMO provides an opportunity for Council to consider applying a moderate risk in appropriate circumstances and including more exemptions for planning applications. It is important to advise that the consideration of changing the risk tolerability to moderate for certain types of development/buildings like dwellings and other domestic buildings does not mean that Council changes their stance towards accepting risk. If a moderate risk to property for certain types of buildings was unacceptable Council would not be considering any change to its current tolerability criteria. Previously Council has generally opted for a low-risk approach – the updated information coming from the review allows increased flexibility and aligns with industry standards.

The benefit would mean that by accepting a moderate risk to property, Council will be able to provide improved opportunities for some properties that cannot achieve a rebuild under the current requirements, particularly after a major storm event.

Council must act in accordance with its adopted policies to be fully protected with insurance. Updating Council's position to align with industry standard guidance and updating the associated Planning Controls will enable Council to consider appropriate development in areas classified as having Moderate risk and still be consistent and not compromising Council's insurance protection. Formal advice has been sought from Council's insurance provider and will be considered as part of the Amendment process.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Amendment C217 Panel Report
2. Amendment C217 Panel Recommendations Response
3. Summary of Submissions
4. EMO Schedule adoption
5. Incorporated Document adoption
6. Clause 72.08 Schedule adoption
7. WSP Golder Basis for Amendment Report Background Document
8. Amendment C217 Explanatory Report
9. Clause 72.04 Schedule adoption