

## Response To Panel Recommendations

No	Recommendation	Issue raised by Panel	Response to Recommendation	Recommendation
1	Amend the labelling of the Erosion Management Overlay maps from 'EMO' to 'EMO1'.	The Panel notes that numbering the current EMO as 'EMO1' requires a consequential mapping change not exhibited as part of the Amendment. To rectify this drafting error all existing EMO maps require renumbering from 'EMO' to 'EMO1'.	<p>The current EMO maps in the planning scheme are designated EMO. <i>The Practitioners Guide to Victorian Planning Schemes, Version 1.5, DELWP, April 2022</i> advises at Section 6.5.5 that where a provision is able to only have one schedule the schedule is not numbered and where there are multiple schedules they must be given a number.</p> <p>To amend the maps as part of this amendment may create confusion for the community as the amendment was not exhibited with map changes.</p> <p>As it is Council's intention to pursue a future amendment that would seek to update the EMO mapping, it is recommended that the labelling of the Erosion Management Overlay maps from 'EMO' to 'EMO1' be undertaken as part of that amendment.</p>	<p>Not support.</p> <p>Adopt Amendment C217 without changing the map labelling.</p>
2a)	Amend the Erosion Management Overlay Schedule 1 as shown in the Panel preferred version in Appendix D to:  Under Clause 2.0, delete policy guidance content.	See response to Recommendation 3 below	See response to Recommendation 3	<p>Not support.</p> <p>See response to recommendation 3.</p>
2b)	Under Clause 3.0:  Include a permit requirement for a	The Panel did not support the use of the term 'other lightweight fencing' as it lacks the specificity required for a permit exemption.	Council's Geotechnical consultant has advised that there would be minimal issues with removing the term 'other lightweight fence' from the schedule.	Support.

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	fence and exempt open masonry fencing and timber, wire and aluminium fencing.		Support the removal of the term other lightweight fences from the EMO schedule	Adopt Amendment C217 in accordance with the Panel recommendation.
2b)	Include a permit requirement for a rainwater tank and domestic swimming pool or spa.	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.	Agree with this change.	Support.  Adopt Amendment C217 in accordance with the Panel recommendation.
2b)	Standardise the capacity of water holding structures not requiring a permit to 5,000 litres.	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.	<p>This change is satisfactory if the structure is engineer designed specifically as water holding structures.</p> <p>However, Council's Geotechnical consultant has advised that the risk inherent with the Panel's recommended wording is that someone could build, for example, a small dam and line it with plastic, and refer to this as 'impermeable' and qualify for a permit exemption.</p> <p>As such it is recommended that the exemption include additional wording to specify that the exemption of an "impervious" water holding structure, is one which is specifically engineer designed to hold water.</p> <p>Agree with the Panel that the permit requirements under the Schedule to the EMO can be further adjusted to make this clear and believes the following wording will achieve this:</p>	<p>Support with changes.</p> <p>Adopt Amendment C217 with changes as shown in Attachment 4.</p>

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			<p><i>A permit is required for all subdivision and new buildings and works except for:</i></p> <p><i>Impervious water holding structures engineer designed or manufactured to an Australian Standard such as domestic rainwater tanks and spas, ponds and rainwater gardens with a capacity not exceeding 5000 litres.</i></p>	
2b)	Delete the permit exemption for retaining walls constructed to provide support to existing unsafe earthworks.	<p>The Panel expressed concern that drafting of the exemption (which allows the development of a retaining wall designed to mitigate or reduce a pre-existing landslip hazard which will encourage remediation of existing hazardous earthworks) is not sufficiently clear to enable its consistent application.</p> <p>The Panel recommends requiring a permit for all retaining walls.</p>	<p>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.</p> <p>Council's Geotechnical consultant has advised that this type of exemption 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. Council does not need to specify or define what are unsafe earthworks.</p> <p>However 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. If an individual wants to improve the stability by retaining it, a planning permit should not be required for this. By specifying that the exemption in this particular case applies to earthworks which were undertaken prior to 2001, this makes the exemption clear.</p> <p>Notwithstanding the above, if the retaining wall is higher than 1 metre, a building permit would still be required.</p> <p>The proposed exemption wording below is proposed to be included in the Schedule, which addresses the Panel's concern regarding clarity on this matter:</p>	<p>Not support.</p> <p>Council adopt Amendment C217 without deleting the exemption for retaining walls constructed to provide support to existing unsafe earthworks.</p>

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			<i>A retaining wall or slope retention to support existing earthworks provided the earthworks were undertaken prior to 2001.</i>	
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.	Agree with the Panel's recommendation as there was a drafting error in exhibited EMO schedule.	Support.  Adopt Amendment C217 in accordance with the Panel recommendation.
2b)	Repair and routine maintenance	The Panel concluded that repair and routine maintenance have not been demonstrated to increase the risk of landslip.  The Panel recommended that permit exemptions for repair and routine maintenance provided by Clause 62.02-2 Buildings and Works exemptions should remain without local variation.	Agree with repairs and routine maintenance being removed from the EMO Schedule as these types of works are already exempted under Clause 62.02-2.	Support.  Adopt Amendment C217 in accordance with the Panel recommendation.
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	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.	Support with changes.  Adopt Amendment C217 with changes to further clarify the application requirements.

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		a logical list so they can be easily understood by landowners and practitioners.		
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 Victoria Planning Provisions to ensure consistency across the Planning Scheme.	As the EMO manages a potential risk to life and property, it is unlikely that the application requirements would 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. This is accepted with some minor changes. The proposed wording is set out in Attachment 4.	Support with changes. Adopt Amendment C217 with minor changes.
3	Insert a new local policy in Clause 13.04-2S (Erosion and landslip) as shown in the Panel preferred version in Appendix E.  Amend the Table 1 Maximum tolerable risk to policy to make development types consistent with the Land use terms at Clause 73.03	The Panel commented that Council's proposed drafting of Clause 2.0 is much more than a Statement of Risk. It contains elements of a 'requirement' or a 'policy guideline'.  The exhibited drafting "Risk from landslip needs to achieve a Tolerable Risk level to be considered suitable for new development" and seeks to set a limit on the discretion that might be exercised by a decision maker.  The Panel considered that this is beyond the operational scope of the EMO, and inconsistent with the Ministerial Direction on the Form and Content of Planning Schemes which makes no provision to	The <i>Practitioners Guide to Victorian Planning Schemes, Version 1.5, DELWP, April 2022</i> sets out in Section 4.2 and Section 6.4.2 the rules for writing local policies, and specifically in relation to policy guidelines (page 84):  <i>Operationally, planning policy must be flexible to allow alternative solutions. In most instances specific and (often numerical requirements) can be included in a schedule to a zone or overlay.</i>  <i>Policy guidelines are an optional part of policy and are not a substitute for a control. They are generally only required in exceptional circumstances. Proper use of zone and overlay schedules, together with robust strategies in policy, will usually avoid the need for policy guidelines.</i>  <i>In addition to meeting the rules outlined in Chapter 4.2 a policy guideline must:</i>  • <i>directly derive from an objective or strategy in a policy (at the state, regional or local level) and set out a clear expectation of how an objective or strategy can be met.</i>	Support Panel Recommendation in part.  That Council adopt Amendment C217 without a local policy and include the Statement of Risk in the EMO Schedule 1 as exhibited.  That Council amend the land use terms in Table 1 as recommended by the Panel.

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		include 'requirements' or 'policy guidelines' in the schedule.	<ul style="list-style-type: none"> <li>• <i>provide a standard that guides the exercise of discretion for a decision-maker.</i></li> <li>• <i>be based on appropriate data or research.</i></li> <li>• <i>not repeat or contradict controls in a zone, overlay, particular or general provision. This would include not repeating application requirements or decision guidelines.</i></li> <li>• <i>not attempt to prohibit an alternative outcome that meets the objective(s) of the policy.</i></li> <li>• <i>be the only appropriate implementation measure to convey the guideline, including because an appropriate alternative VPP instrument is not available or an inefficient or complicated implementation, using a number of zones and overlays, would be needed.</i></li> </ul> <p><i>Operationally, policy guidelines must be taken into account, but are not required to be given effect to (unlike objectives and strategies). A permit applicant can propose an alternative method, but must still demonstrate that any proposed alternative satisfies the relevant objective or strategy.</i></p> <p>Placing the statement of risk in a policy as a discretionary policy guideline that does not need to be given effect to is not appropriate in this instance.</p> <p>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).</p> <p>In addition, separating the Statement of Risk from the Schedule will likely create confusion for planning scheme users.</p>	

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			<p>Neither the Practitioners Guide or Ministerial Direction on the form and content of planning schemes provide specific guidance on what a “statement of risk’ is to include.</p> <p>The statement of risk proposed for inclusion is identical to the statement include in the EMO in the Colac-Otway Planning Scheme that has been approved by the Minister for Planning.</p>	
4	<p>Amend Clause 72.02 Schedule (Documents Incorporated in this Planning Scheme) to include:</p> <p>a) Guidelines for Landslide Susceptibility, Hazard and Risk Zoning for Land Use Planning, Journal of Australian Geomechanics Society, Volume 42: No 1, March 2007.</p> <p>b) Practice Note Guidelines for Landslide Risk Management 2007, Journal of</p>	<p>The Panel commented that In this instance the application requirements of EMO1 require risk assessments to be prepared in accordance with reference documents listed in the Incorporated Document.</p> <p>The Panel felt that the application requirements 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. On this basis, they should be incorporated into the Planning Scheme.</p>	<p>The key concern with including the full documents as incorporated documents the Planning Scheme, is that if these Guidelines are updated in the future, the planning scheme will 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.</p> <p>The documents in their entirety are able to be accessed online and are likely to be only useful to practitioners, who generally have access to these documents. Following approval of the amendment a link to the documents will be provided on the website.</p>	<p>Not supported.</p> <p>Council adopt Amendment C217 without incorporating the 2007 Guidelines into the Planning Scheme.</p>

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	Australian Geomechanics Society, Volume 42: No 1, March 2007.			
5	Amend Clause 1.0 of the Incorporated Document <i>'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'</i> to replace 'Registered Professional Engineer (RPEng)' with 'Registered Professional Engineer, Victoria registered under Part 2 of the Victorian Professional Engineers	<p>The Panel commented that Council's expert witnesses' recommendation that changes to the professionals listed in the Incorporated Document improve clarity and warrant support.</p> <p>The Panel also commented that the availability of the Yarra Ranges landslide inventory is not directly relevant to the Amendment, however it will support the preparation of technical information needed to fulfil the application requirements of the EMO1. It is appropriate that Council makes this information available to practitioners.</p>	Council agrees with the Panel's recommendation and has made the required change to the Incorporated Document.	<p>Support</p> <p>Adopt Amendment C217 in accordance with the Panel recommendation.</p>



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	Registration Act 2019'.			