

AMENDMENT C217- CHANGES TO THE EROSION MANAGEMENT OVERLAY SEEKING AUTHORISATION FROM THE MINISTER FOR PLANNING TO EXHIBIT

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

The storm event of June 2021 resulted in the damage and destruction of many dwellings in Yarra Ranges. Many of the affected properties are in the Dandenong Ranges and hills areas of the Shire, which are also susceptible to other natural hazards including bushfire and landslip.

Following the storm event, Council received grant funding of \$300,000 under the National Recovery and Resilience Agency's Preparing Australian Communities Program – Local, to undertake a review of the current Erosion Management Overlay (EMO) planning scheme provisions in the Yarra Ranges Planning Scheme. In response Council engaged an expert geotechnical consultant to undertake the review.

As a result of the review and in line with other Council's, it is proposed to amend the current EMO schedule to make it more streamlined and user friendly. The amendments will also ensure 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). In addition, amending the existing EMO schedule will simplify its structure, include new exemptions, and accept 'moderate' property risks in particular circumstances.

To commence the amendment process, Council must seek authorisation from the Minister for Planning to prepare and exhibit an amendment (Amendment C217).

RECOMMENDATION

That Council

- 1. 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, generally in accordance with the attachments to this report.**
- 2. Subject to the Minister’s authorisation, exhibit Amendment C217 to the Yarra Ranges Planning Scheme.**
- 3. That Council received a further report considering submissions post the exhibition of the amendment.**

RELATED COUNCIL DECISIONS

There are no related Council decisions relevant to this item.

DISCUSSION

Purpose and Background

Purpose

The purpose of this report is to discuss a request to the Minister for Planning to authorise the preparation and exhibition of Amendment C217 to the Yarra Ranges Planning Scheme.

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 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, which is currently not based on the latest information.

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 has been provided to Council and recommends 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.

Key Issues

Current Erosion Management Overlay Provisions

The purpose of the Erosion Management Overlay (Clause 44.01) and schedule in the Yarra Ranges Planning Scheme is to protect areas prone to erosion, landslip, other land degradation or coastal processes by minimising land disturbance and

inappropriate development. The current EMO and accompanying schedule are at Attachments 1 and 2.

The EMO currently applies to 111.95 km² of the total 2468.16 km² of land in Yarra Ranges. There are more properties in the Dandenong Ranges affected than elsewhere in the Shire.

Planning permission is required for buildings and works, including vegetation removal and the subdivision of land, unless a particular exemption can be met. Planning application requirements are listed in the schedule to the overlay and are to be provided to Council’s satisfaction. The required items include:

- Development plans;
- A geotechnical assessment which is prepared or technically verified by a qualified Geotechnical practitioner; and
- A written landslip risk assessment.

Under the existing schedule to the Erosion Management Overlay, the objectives listed require that “development is not carried out unless the risk associated with the development is a tolerable risk”. In Yarra Ranges the risk level must be assessed as low or very low for it to be considered tolerable. This is more conservative than the AGS 2007 guidelines and EMO schedules in other municipalities which are accepting of moderate risk as being tolerable.

Amendment C217 Provisions

The amendment proposes to amend the current EMO schedule 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 recommended 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.

Provision	Change	Benefit
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 explanation is provided below.	Consistency with AGS 2007 Guidelines to provide a clear decision basis. 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.

Further details on the proposed amendment are included in the draft Explanatory Report at Attachment 3 and draft EMO1 Schedule and draft Incorporated Document at Attachments 4 and 5.

Reconsideration of risk to property criteria

The most significant change proposed 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.

Community Information

The review of the EMO provisions also considered strategies to help build community resilience to landslide hazards including the following measures (in summary):

Table 2: Strategies for Building Community Resilience to Landslide Hazards

Measure	Outcome
Manage information relating to landslide susceptibility and records of relevant infrastructure	Good information management is critical for emergency preparedness, response, and recovery.
Improve materials and practices	Putting in place durable and bushfire resilient drainage, ground retention, wastewater, and transport infrastructure in areas susceptible to landslide.
Balancing tree and vegetation removal	Balancing vegetation removal and considering the importance of retention of vegetation to promote slope stability.
Improve planning and building application measures	Improving measures and enforcing compliance with good engineering practices for development.
Improve communication about landslip	Clear communication to the community about landslip changes and the reasons for change. More information about hazards and equipping the community with more knowledge about practices to avoid and encourage.

Future Review

A further review of the mapping on which the EMO is based, considering the LiDAR mapping information that was not available at the time the current EMO was prepared in 1999, will be undertaken in the future.

Options considered

Option 1 – amend the EMO provisions

Council has an obligation under the *Planning and Environment Act 1987* to secure a pleasant, efficient, and safe working, living and recreational environment for all Victorians and visitors to Victoria. The review from Council's geotechnical expert is that the planning scheme provisions, and mapping related to the EMO in the Yarra Ranges Planning Scheme should be amended and updated.

The amendment proposes changes that will have a positive outcome for landowners with the EMO already applying to their land and ensures a rapid respond for landowners affected by the June 2021 storms.

Option 2 – not proceed with an amendment

If the proposed changes were not pursued, Council would be failing in its obligations under the *Planning and Environment Act 1987* and the Yarra Ranges Planning Scheme to ensure its planning scheme is reviewed and kept up to date.

Recommended option and justification

It is recommended Option 1 be pursued to enable positive changes to be made more quickly for properties already affected by the EMO. Landowners will be notified and provided with an opportunity to make a submission.

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.

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 will be 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

If Council supports the amendment proposal and resolves to seek authorisation from the Minister for Planning to prepare and exhibit the amendment, and the Minister grants authorisation, the amendment will be subject to the standard notification requirements for planning scheme amendments as required under the *Planning and Environment Act 1987*, including:

- Notification in a local newspaper;
- Letters to affected land owners and occupiers and other key stakeholders in the community;
- Information available on Council's website and Council offices; and
- Direct notification to relevant government agencies and departments.

It is also proposed that additional consultation be undertaken. This includes:

- A fact sheet included with the notification letters;
- Online meeting opportunities with affected land owners and key stakeholders;
- Updated information on Council's Rebuild Support Service website portal that already contains useful links, videos, and factsheets on landslip, and
- Social media and other media releases.

A further report would be prepared for Council to consider all submissions received through the exhibition of the 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. Current Clause 44.01 Erosion Management Overlay
2. Current Schedule to Clause 44.01 Erosion Management Overlay
3. Draft Explanatory Report Amendment C217
4. Draft Schedule 1 to the EMO (showing proposed EMO1)
5. Proposed Incorporated Document to the EMO