

IN THE MATTER OF THE INQUIRIES ACT 2014

AND

**IN THE MATTER OF THE BOARD OF INQUIRY
INTO THE MCCRAE LANDSLIDES**

WITNESS STATEMENT OF GERRARD RAYMOND BORGHESI

I, Gerrard Raymond Borghesi, Retired, of 10-12 View Point Rd, McCrae in the State of Victoria do solemnly and sincerely declare as follows:

1. I make this statement in response to a request from the Board of Inquiry (**Board**) dated 22 April 2025.
2. My full name is Gerrard Raymond Borghesi. My previous occupation was a senior executive at Exxon Mobil Corporation however I have been retired since November 2020.
3. I, together with my spouse Bronwyn Lesley Borghesi (**Bronwyn**) (collectively **we** or **our**), purchased the property known as 10-12 View Point Rd, McCrae 3938 (**Property**) on 14 May 2014.

Description of Property

4. The Property consists of approximately 2,520 square meters of land of which:
 - a. approximately 1,000 square meters is gently sloping and comprises a two-story brick residence constructed in the 1930s (**House**), near View Point Road, set back 15 to 20 meters from the edge of the scarp on the southern side of the Property, and landscaped gardens surrounding the House;
 - b. the remaining approximately 1,520 square meters comprises a steep hillside of slope angle between 30 and 45 degrees, as is common throughout the area.
5. There is a pathway and timber stairway on the hillside that leads down to Penny Lane (on the Northern boundary of the Property).
6. Between 2015 and 2017 a new courtyard and garage was added to the eastern flank of the House, and a new balcony and courtyard was added to the western flank of the House. A feature survey of the Property is annexed hereto and marked **GB-1**.

Usage of Property

7. Between May 2014 (when we purchased the Property,) and December of 2020, the Property was mostly vacant as we were living overseas, however it was occupied from time to time by our family on holiday visits to McCrae, typically around 4 to 6 weeks per year.
8. Following my retirement and subsequent return to Australia in December of 2020, the Property has served as the principal place of residence for Bronwyn and myself until

the landslide in January of 2025. I estimate that once we moved in permanently, we have occupied the Property approximately 80% of the time.

Observations of the Presence of Water on View Point Road and its surrounds and causes

Pre-May 2023

9. Between purchasing the Property in May 2014 and especially from December 2020 to May 2023 when we resided at the Property, I regularly observed:
 - a. A flow of water that appeared to originate and emanate from a spring under two properties located at 1 and 5 Prospect Hill Road McCrae (directly upstream of View Point Road and the Property);
 - b. That this 'spring water flow' was managed by the Mornington Peninsula Shire Council (**Shire** or **Council**) by intercepting and diverting it down a (since replaced) stormwater drain on Prospect Hill Road and into a (since replaced) culvert at the top of View Point Road (**Culvert**), where the stormwater drain terminated. The Culvert was always and continuously overflowing as water came up and out of it, and facilitated the flow of the 'spring water' down the fractured and cracked northern kerb of View Point Road. A photo of the Culvert is annexed hereto and marked **GB-2**. A Google image of a portion of the cracked northern kerb of View Point Road is annexed hereto and marked **GB-3**; and
 - c. a general increase of the saturation of the hillside on our Property, and in particular in the location of the landslide that occurred on the Property in November of 2022 (**2022 landslide**). Photos of seeps on the hillside during that period (**Seeps**) (with my notations) are annexed hereto and marked **GB-4**
10. This continuous flow and the Seeps did not stop during dry periods, however I observed that the volume of water that flowed down the cracked northern kerb of View Point Road changed depending on the weather. In my estimation:
 - a. during 'dry' periods, the flow rate was approximately 5-10 litres per minute at the top of the road; and
 - b. during periods of rainfall (and especially heavy rainfall) it could be two to three times that amount
11. The continuous flow of water caused moss and algae to build up from time to time, and I observed Council vacuum trucks frequently cleaning the moss and algae. A screen shot of a google image search that that I did showing the moss and algae is annexed hereto and marked **GB-5**.
12. After any period of significant and/or sustained rainfall, the flow of water on View Point Road would increase, and I observed that the waterflow would occasionally flow over the kerb at the Western (lower) end of View Point Road (where the road turns southwards), which I understand to was a cause for concern for our neighbours, and particularly those with property below the overflow location at 14-16 View Point Road, based on my conversations with John D'Helin who resides there.

13. I note that a 'speedbump' was installed on View Point Road to the west of the Property, which diverted the continuous water flow from the northern kerb of View Point Road to the southern kerb. A google image of the speedbump with my notations is annexed hereto and marked **GB-6**.
14. I was informed by Council's chief civil engineer (Chris Lynn) shortly after the 2022 landslide and believe that:
 - a. a project to install a new stormwater drain down the full length of View Point Road was a low priority due to Covid-related delayed projects and other higher priorities
 - b. the (since replaced) Prospect Hill Road stormwater drain, which ran into the Culvert (see GB-2) and the 'speedbump' (see GB-6) was the Council's way of managing the waterflow emanating from the 'springs' at the time.
15. From purchasing the property in 2014 until mid-2023 (when the Council installed stormwater drains and new kerbs at View Point Road), we noticed increasing saturation of the hillside in the location of the 2022 landslide, and in an area approximately 10 meters to the east of the 2022 landslide location.
16. As a result of the increased saturation, I installed 'aggie drains' across the hillside pathway in July of 2021 to control erosion and make the pathway down to Penny Lane trafficable. A photographic image of the saturated hillside where the aggie drains were installed is annexed hereto and marked **GB-7**. A photographic image of the installed aggie drains is annexed hereto and marked **GB-8**. Also see GB-4 which are photos of the Seeps (also in that area), during that period.

May 2023 onwards

17. Following the 2022 landslide, around May of 2023 I observed that the Council undertook significant works on View Point Road and Prospect Hill Road (**Works**) over a period of about 14 weeks. The Works included the installation of new kerbs and a stormwater drain in View Point Road. Photos of the Works are annexed hereto and marked **GB-9**.
18. Following the completion of the Works, I observed that:
 - a. the continuous flow of water down the northern kerb of View Point Road stopped
 - b. the continuous flow of water that previously flowed down northern kerb of View Point Road appeared to have been successfully captured and diverted into the new stormwater drain.
 - c. the hillside in the area of the 2022 landslide began drying out over a period of 4 to 6 months, and in particular, the Seeps which emanated from the hillside on the eastern and western flanks of the 2022 landslide area (see **GB-4**) dried up completely
19. Based on a report that we commissioned from geotechnical firm CivilTest Pty Ltd, and common sense inferencing, I believe that the reason the Seeps dried up in the months following the Works that occurred in May 2023 was due to the elimination of continuously flowing water leaking through the damaged north kerb in View Point Road and into the hillside. I note that a report by CivilTest Pty Ltd refers to a ground penetrating radar scan that I commissioned which identifies an underground void from the nature strip in front of the Property which connects to an old underground sewer

line which in turns heads downhill in the direction of the hillside and 2022 landslide. A copy of the CivilTest Pty Ltd is annexed hereto and marked) **GB-10**.

20. For completeness I note that there was never any visible saturation or water flow in the eastern gully area of the Property (**eastern gully area**) until 5 January 2025 when the second landslide (**2025 landslide**) commenced, when a significant subterranean flow of water was uncovered by the landslide.

Approaches to Shire / South East Water

2022 Landslide

21. Prior to the 2022 landslide, neither Bronwyn or I made any direct approaches to the Shire regarding the flow of water on View Point Road, however I am informed by our neighbours (and in particular John D'Helin of 14-16 View Point Road) and believe, that there were numerous complaints made over many years by neighbours about the water flow.
22. Following the 2022 landslide, we have exchanged numerous emails and attended numerous on-site meetings with Claudio Flores, a delegate of the Shire's Municipal Building Surveyor (**Delegated MBS**). At those on-site meetings I pointed out to the Delegated MBS the location of water emanating from the hillside area, and specifically, the Seeps on either side of the timber staircase that had been in place since we purchased the property in 2014, which was located approximately 4 metres down from the top of the scarp (see GB-4).
23. We have also met the Shire's engineers and the Shire's then CEO (John Baker) on site (in September 2024), to discuss the cause of the 2022 landslide, our view that the Shire had caused it, and our view that the Shire was liable for our losses resulting from it.
24. During site visits, we repeatedly asked the Delegated MBS if our position (that we were not liable for the landslide) was 'reasonable' and he agreed it was, but that the matter was 'out of his control'. At no time did Council formally admit to any liability, however the Shire's CEO during the above-mentioned September 2024 meeting, advised Bronwyn and I, that they now 'take these matters to court and we accept that we will win some and lose some'. He noted that he may consider offering to 'split' the costs of rectification. Despite John Baker's promise to meet again with us to try and settle the 2022 landslide issues, the meeting did not eventuate as he resigned from his position in October 2024.
25. I note that we have issued proceeding against the Shire at VCAT to recover our loss and damage arising from the 2022 landslide, and those proceedings are presently on foot.

2025 Landslide

26. Since the 2025 landslide, we have been in constant communication with the Shire regarding its response to the 2025 landslide.
27. Between 5 January 2025 and 14 January 2025, I reported movement and degradation of the head scarp and implored the Shire to undertake urgent works to prevent and intercept the subterranean flow of water from Shire property into our Property in the eastern gully area, however the Shire has to date dismissed these requests. A copy of our diary entries, and correspondence with the Shire is annexed hereto and marked **GB-11**.

28. After the 2025 landslide, we had discussions with Mr Matt Glover (who I believe was the Shire's Municipal Building Surveyor (**MBS**) at the time) and Mr Jimmy Jones (**Shire Representatives**) on several occasions when they visited the property, as well as with representatives of South East Water (Jason Marsh SEW contractor, 'Rob' SEW contractor and 'Charles' SEW supervisor) (**SEW Representatives**). We advised the Shire Representatives and SEW Representatives that there had been water seeping out of Coburn Avenue and Charlesworth Street McCrae, and we queried if these water releases could be related to the landslide on January 5 and if they were investigating this. On one occasion I was present when one of the SEW Representatives told Bronwyn that neither authority wanted to dig, as 'whoever started to dig would be taking responsibility for the water leak'.

Works performed on the garden areas of the Property between 1 January 2020 and 1 January 2025

29. When we returned to reside in Australia in December 2020, we started undertaking increased general maintenance of the gardens on the Property, by performing the following works:
- a. removal of dead vegetation and invasive weeds on the hillside (subject to a bushfire overlay)
 - b. trimming some large trees on the Property at the request of our immediate neighbours;
 - c. Planting 18, 30 cm high vine cuttings in an existing 6m x 2m garden bed, and 20-30 native plants and shrubs in the hillside area and installing a water tap and hose halfway down the hillside to water these new plants;
 - d. installing a retaining wall less than one meter in height across the 'Vee' of the eastern gully area), to create a level area for a vegetable patch, and installing 6 garden beds.
 - e. There was limited backfill used in this area as the retaining wall essentially created a 'hard edge' to an already steep hillside edge. The Delegated MBS was aware of this retaining wall and inspected it immediately following the 2022 landslide. A photo of that retaining wall is annexed hereto and marked **GB-12**.
 - f. installing a geotechnically and structurally engineered wall in November 2022 (**Reinforcement Wall**), 30 cm in front of the old retaining wall, following the existing steep profile of the hillside, to strengthen the existing retaining wall that had shown signs of settlement. Photos of the Reinforcement Wall are annexed hereto and marked **GB-13**. The Shire was not advised of this.
 - g. One tree and one large shrub were removed in the vegetable patch area, and 12 new trees were planted generally in their place. The vegetable patch and the new trees in this area were watered by 'microjet' sprinkler heads controlled by a water timer. There were 6 microjet sprayers connected to a tap around the timber staircase to water the shrubs we had installed there

Chronology of relevant critical events between 1 January 2025 to 22 April 2025

Movement in the earth on Property

30. In the eastern gully area and prior to January 5, there was approximately 150mm of soil settlement behind the east end of the Reinforcement Wall. There was no sign of water in this area nor down the eastern gully area.

31. On 5 January 2025, there was substantial movement of earth starting approximately 6m below the ground level of the vegetable patch, when the landslide occurred. This landslide exposed a substantial flow of subterranean water emanating from the hillside at this level (-6m from the vegetable patch ground level). A photo of the water flow is annexed hereto and marked **GB-14** We have previously submitted a video of the water flow to the Board.
32. Between 5 and 14 January 2025 , the soil continued to erode in the eastern gully area as the 'head scarp' continued to fail due to the continuous flow of water, threatening a large gum tree in the gully as well as the Reinforcement Wall's foundations.

Excess moisture on Property, and changes in moisture level

33. There was very little rainfall in the McCrae area over the December 2024 to 14 January 2025 timeframe, and the ground was dry throughout the Property. Immediately following the 5 January landslide, a substantial subterranean flow of water estimated to be between 10-15 litres/minute was exposed by the landslide, emanating from the hillside approximately 6m below (-6m) the level of the vegetable patch ground level (see GB-14).
34. Between 5 and 14 January 2025, we monitored this water flow daily and witnessed the progressive degradation of the head scarp. I also observed the MBS Mr Matt Glover, often with one or two student associates, doing the same with daily visits.
35. It appeared to me that the water flow rate was fluctuating over time (estimated to be between 10 to 15 litres/minute), and in an irregular and unpredictable manner, and appeared to emanate from the cliff in varying locations horizontally across the entire head scarp (a horizontal distance of approximately 10m), but always at the -6m level or lower. A photo of the water flow, shown by the green dye in the hillside is annexed hereto and marked **GB-15**.
36. There was no other movement noted on the Property, including the area of the 2022 landslide. There was no detectable movement in the Reinforcement Wall at this time.
37. I note that there has also been no observable movement of our residence since the 2025 landslide, nor any signs of structural distress, as witnessed by the current MBS (David Kotsiakos) during a preliminary dilapidation report inspection in March 2025.
38. Immediately following the January 14 landslide, we witnessed liquified soil falling away from beneath 6 View Point Road at approximately the -6m level and lower. Photographic and video evidence has already been submitted to the Board. The video shows heavily saturated soil falling from beneath 6 View Point Road within the same minute of the January 14 landslide occurring.
39. Water continued to flow in the eastern gully area at the same rate as witnessed prior to the January 14 landslide. The Reinforcement Wall was partly destroyed by this landslide as the liquified soil had removed the soil in front of (to the north) the Reinforcement Wall and its concrete foundations (piers).

Damage to roads or other infrastructure on View Point Rd or the surrounding roads

40. I became aware of significant water breaches in the roads uphill of the Property from early January 2025, specifically in the Coburn Avenue and Charlesworth Street areas. I discussed this with both Shire and South East Water representatives during multiple 'on-site' visits to the Property between 5 January 2025 and 14 January 2025.
41. There was no noticeable degradation of the bitumen on View Point Road at this time.
42. I repeatedly asked representatives of both the Shire and South East Water what they were doing to respond to the water breaches that could be related to the landslides however I have received no substantive response, other than both authorities consistently stating that they were 'continuing to identify the source of the water.'
43. In early April 2025, through discussions with our neighbours, I became aware of recent degradation (settlement and bitumen cracking) at the top end of View Point Road

Contact with the Shire or other public authority about the above issues including requests for action or assistance.

44. Between 5 January 2025 and 14 January 2025, we have had continuous contact with Shire representatives. We had at least 10 discussions with South East Water technicians and a supervisor who were conducting leak tests in the area to determine if their infrastructure was at fault. These interactions are documented in the email exchanges with the MBS and are supported by the handwritten diary entries (see GB-11).
45. As I have stated above, I have repeatedly asked the Shire to undertake emergency works to attempt to intercept the flow of water (**Interception Works**), including digging a trench or installing water extraction boreholes (or 'spears') on the nature strip of 6 View Point Road (as this area is directly uphill of the eastern gully area and a natural water flow path), as I could see that a larger event was about to occur, and on January 6 I informed the Delegated MBS that he should 'take the lead' as clearly there 'was a bigger issue' (in respect to why these landslides were occurring)(see GB-11 above). Correspondence with Matt Glover in relation to Interception Works is annexed hereto and marked **GB-16**.
46. Following the landslide on 14 January 2025, we continued to request (at the weekly Council-Residents meetings) that the Shire immediately perform the Interception Works. However, the Shire failed to respond to our requests. We have also written to Bulent Oz (acting CEO for the Shire) and Andrew Brick (Team Leader - Community Resilience and Emergency Management for the Shire) requesting urgent action. To date, Interception Works have not commenced. My correspondence with Bulent Oz and Andrew Brick is annexed hereto and marked **GB-17**.

Conclusion

47. From the content and tenor of the responses from the Shire, it is clear to me that the Shire has been solely focused on identifying the source of the water and the accountable authority or person, rather than attempting to intercept the flow of water from Council property into private land (including the Property), and before it reaches the scarp, which I am informed by CivilTest Pty Ltd, and believe, is critical to reducing

the risk to life and property in the McCrae escarpment generally, and the Property in particular.

Irrelevant & Sensitive

Signed:

Gerrard Raymond Borghesi

Dated this 2nd day of May 2025