

## **BOARD OF INQUIRY INTO THE McCRAE LANDSLIDE**

### **David Simon Witness Statement**

**Prepared for the purpose of a Board of Inquiry**

**11 April 2025**

**WITNESS STATEMENT OF DAVID SIMON**

**Name:** David Simon

**Address:** 2 Queen Street, Mornington

**Occupation:** Acting Director Planning and Environment

**Date:** 11 April 2025

1. I make this statement in response to the Request to Produce a Witness Statement dated 3 April 2025 (**Notice**). This statement has been prepared with the assistance of lawyers and Shire officers.
2. This statement is true and correct to the best of my knowledge and belief. I make this statement based on matters within my knowledge and documents and records of the Council. I have also used and relied upon data and information produced or provided to me by officers within the Shire.

**Employment history**

3. I have been employed by the Shire for approximately four years and have held the following positions:
  - (a) Manager - Development Services, August 2021 to 17 March 2025; and
  - (b) Acting Director Planning and Environment, 17 March 2025 to current.
4. Prior to being employed by the Shire, I was:
  - (a) Statutory Planning Coordinator, Surf Coast Shire Council from May 2020 to August 2021;
  - (b) Manager Planning Services, South Gippsland Shire Council October to December 2019;
  - (c) Principal Town Planner, KDC Pty Ltd from March 2019 to May 2020;
  - (d) Statutory Planning Coordinator, South Gippsland Shire Council from July 2011 to March 2019;
  - (e) Senior Environmental Planner, Worley Parsons, from August 2010 to July 2011; and
  - (f) Town Planner/Senior Town Planner, Singleton Council, from November 2006 to August 2010.

5. I obtained a Bachelor of Environmental Science (Environmental Management) from the University of Newcastle in 2005.

#### Response to Questions

6. This statement responds to questions 4 to 8, 10, 14 to 17 and 21 to 27 in the Notice.

#### Background to the November 2022 Landslide

##### Question 4

**Identify the address of the property or properties in the vicinity of the west end of View Point Road that was or were principally affected by the November 2022 Landslide (Affected Property).**

7. I do not have direct knowledge of the precise events that led to the November 2022 Landslide and the properties it affected. However, I have accessed materials relating to the events of the November 2022 Landslide held by the Shire, including the expert report of Mr Dane Pope of PSM Consult Pty Limited (Ref No. PSM5226-002L) dated 3 November 2023 [[MSC.5000.0001.1206](#)]. Based on this information, I understand that:
- (a) The November 2022 landslide started from the upper slope to the rear of the house located at 10-12 View Point Road, McCrae, Victoria, 3938. Debris flowed across Penny Lane and into the rear of the properties at 2 Penny Lane, McCrae and 3/613 Point Nepean Road, McCrae, Victoria, 3938;
  - (b) An emergency order was issued under the Building Act 1993 on 15 November 2022 to the owners and occupiers of 2 Penny Lane, McCrae, Victoria 3938 and 3/613 Point Nepean Road, McCrae, Victoria, 3938, prohibiting occupation and requiring evacuation, and on 15 November 2022 to the owners and occupiers of 10-12 View Point Road, McCrae, Victoria, 3938, prohibiting entry and use of land within three metres of the embankment and beyond until the land was deemed safe by the MBS; and
  - (c) Mr Pope, concluded, based on the results of a risk assessment, that there was an unacceptable risk to life for occupants of the dwellings at 2 Penny Lane, McCrae, Victoria, 3938 and 3/613 Point Nepean Road, McCrae, Victoria, 3938.
8. In light of these matters, I understand that the addresses of the properties in the vicinity of the west end of View Point Road that were principally affected by the November 2022 Landslide (**Affected Property**) are as follows:
- (a) 10-12 View Point Road, McCrae, Victoria, 3938;

- (b) 2 Penny Lane, McCrae, Victoria, 3938; and
- (c) 3/613 Point Nepean Road, McCrae, Victoria, 3938.

9. The below annotated aerial photograph has been extracted from page 5 of the expert report of Mr Dane Pope of PSM Consult Pty Limited (Ref No. PSM5226-006R Rev 0) dated 11 June 2024 (**PSM Liability Report**) [[MSC.5000.0001.0639](#)], and shows the respective locations of each of the Affected Property with:

- (a) "P1" being 10-12 View Point Road, McCrae, Victoria, 3938;
- (b) "P2" being 2 Penny Lane, McCrae Point, Victoria, 3938; and
- (c) "P3" being 3/613 Point Nepean Road, McCrae, Victoria, 3938.



Inset 1: Plan of properties affected by the Landslide (Aerial Image from Nearmap dated 25 August 2023).

#### Question 5

In relation to each Affected Property, identify (based on the Shire's records):

- 5.1 the volume and folio number in the certificate of title;
- 5.2 the name(s) of the registered owner(s);
- 5.3 the period over which each Affected Property was constructed; and
- 5.4 any construction plans or other planning documents submitted to the Shire for the purpose of any construction on each Affected Property.

- 5.1 The volume and folio number in the certificate of title



10. In answering this question, I have relied on certificates of title made available to me.
11. In the table below I set out the volume and folio number in the certificates of title for each Affected Property.

Address of Affected Property	Volume number	Folio number	Document Date	Document type	Document ID
10-12 View Point Road MCCRAE VIC 3938	09438	254	08/04/2025	Certificate of Title	<a href="#">MSC.5010.0001.0001</a>
3/613 Point Nepean Road MCCRAE VIC 3938	10939	933	09/04/2025	Certificate of Title	<a href="#">MSC.5010.0001.0013</a>
2 Penny Lane MCCRAE VIC 3938	10939	932	08/04/2025	Certificate of Title	<a href="#">MSC.5010.0001.0002</a>

## 5.2 The name(s) of the registered owner(s)

12. My answer to this question is also based on the certificates of title I have reviewed.
13. In the table below I set out the names of the registered owners of each Affected Property.

Address of Affected Property	Registered owner(s)	Interest	Document Date	Document type	Document ID
10-12 View Point Road MCCRAE VIC 3938	Gerrard Raymond Borghesi Bronwyn Lesley Borghesi	Estate Fee Simple, Joint Proprietors	08/04/2025	Certificate of Title	<a href="#">MSC.5010.0001.0001</a>
3/613 Point Nepean Road MCCRAE VIC 3938	Paul Willigenberg Denise Willigenberg	Estate Fee Simple, Joint Proprietors	08/04/2025	Certificate of Title	<a href="#">MSC.5010.0001.0013</a>
2 Penny Lane MCCRAE VIC 3938	Jon Michael McLean	Estate Fee Simple, Sole Proprietor	09/04/2025	Certificate of Title	<a href="#">MSC.5010.0001.0002</a>

## 5.3 The period over which each Affected Property was constructed

14. In order to provide a response to question 5.3, I have caused to be conducted searches of the Shire's records relating to each Affected Property. In the time available to prepare this witness statement, an exhaustive search of the Shire's records has not been possible. However, I understand that searches for additional records relevant to this question are ongoing and if such documents are identified by the Shire, I understand they will be provided to the Board of Inquiry as soon as possible.

15. In respect of 10-12 View Point Road, in the time available I have been unable to locate documents that provide information about the period over which the property was constructed, such as a planning permit or occupancy permit. However, based on an aerial photograph dated 1939 which appears to show a dwelling at 10-12 View Point Road (which photograph appears in Figure D2 Appendix D to the Report of Dane Pope (rectification) dated 11 June 2024 [\[MSC.5000.0001.1565\]](#)). I understand that the property was built some time in or around the 1930s.
16. I have reviewed documents relating to the subdivision of the parcel of land at 611-613 Point Nepean Road, McCrae (Lot 7 LP 11038 Vol 6573 Fol 562 PC 361036 Vol 10353 Fol 959) into five lots [\[MSC.5014.0001.1275\]](#). Planning Permit P05/0607 was issued by the Shire on 12 May 2005 in respect of that subdivision [\[MSC.5014.0001.1302\]](#), and I understand that the subdivision occurred around that time. My understanding is that the properties at 2 Penny Lane and 3/613 Point Nepean Road were constructed on the lots resulting from the subdivision, and that construction of those properties occurred between 15 April 2005 to 3 February 2006 [\[MSC.5014.0001.1164\]](#). I have based this on the information summarised in the table below, which I have been able to access in the time available.

Date	Event	Document ID
15/04/2005	Issue of Building Permit for 611-615 Point Nepean Road, McCrae Title details: PS 10353 and PS 06573	<a href="#">MSC.5014.0001.1275</a>
03/02/2006	Occupancy Permit for 611-615 Point Nepean Road "Construction of detached dwelling/ Multi-unit Development" by Jason Daniels, Advance Building Strategies	<a href="#">MSC.5014.0001.1164</a>

**5.4 Any construction plans or other planning documents submitted to the Shire for the purpose of any construction on each Affected Property**

17. In providing a response to this question, I have caused to be conducted searches of the Shire's records relating to each Affected Property. In the time available to prepare this witness statement, an exhaustive search of the Shire's records has not been possible. As such, the information below may be incomplete. If additional records relevant to this question are identified by the Shire, I understand they will be provided to the Board of Inquiry as soon as possible.
18. I understand the reference in the question to "construction" to be to the activity of building a structure on the land of an Affected Property. As such, in the response below, I include plans or other planning documents submitted to the Shire for the purpose of any proposed activity of building a structure on the land of an Affected Property.
19. I also understand the use of the word "submitted" to be a reference to documents given to the Shire by external parties, rather than documents generated by the Shire either internally or for



external parties. As such, in the response below, I have included only documents given to the Shire by external parties.

20. The table below records the information I have been able to obtain in the time available about construction plans or other planning documents submitted to the Shire for the purpose of any construction on each Affected Property.

**10-12 View Point Road**

Date	Document type	Description	Document ID
15/11/1978 – 22/09/1987	Shire of Flinders Property File	File contains various documents including a surveyor's certification dated 15/11/1978, a Shire of Flinders Engineer's report dated 71/01/1979, and a Shire of Flinders Subdivision File - Plan of Consolidation PS 2486 (signed 21 January 1979, Sealed 22 Feb 1979), and deletion of 'and sewerage' deleted from PS 2486 dated 20/01/1981.	<a href="#">MSC.5001.0001.4000</a>
<b>Planning Permit P15/1503</b>			
23/06/2015- 22/07/2015	Email chain between Meyer Consulting Pty Ltd and Civil Test	Email chain regarding slope stability assessment conducted in relation to proposed alterations and additions to dwelling, including attached GIS landslip susceptibility mapping and request for further information concerning where a site is covered by yellow overlay.	<a href="#">MSC.5014.0001.0666</a>
24/08/2015	JDA Architects proposed floor plans and drawings	Floor plans and drawings in relation to the proposed alterations and additions to the residence.	<a href="#">MSC.5002.0001.0090</a>
25/08/2015	Application for a Planning Permit	Application for planning permit additions and alternations to existing dwelling including extensions, a new out building and additional retaining walls, hard paving, and new fences/gates.	<a href="#">MSC.5001.0001.6086</a>
21/09/2015	Correspondence from JDA Architects attaching amended drawings	Correspondence attaching amended drawings for the Lower Ground Floor Plan and Ground Floor Plan.	<a href="#">MSC.5002.0001.1468</a>

Date	Document type	Description	Document ID
21/12/2015	Application for Building Permit to Red Textas Consulting Building Surveyors	Application for building permit for alternations and additions to dwelling, construct garage/carport/outbuilding, and garden walls, fences, and paved areas.	<a href="#">MSC.5014.0001.1163</a>
10/03/2016	Building Permit 20160246	Building permit issued by private building surveyor Michael Shaw of Red Textas Consulting Building Surveyors for "alterations and additions to existing three storey dwelling, new shed" in accordance with 8 prescribed conditions. The work was to be commenced by 10 March 2017 and completed by 10 March 2018. The permit contains Geotechnical Site Investigation for Residential Slabs and Footings Summary.	Pages 3-4 of <a href="#">MSC.5002.0001.1357</a>
16/03/2016	Copy of Building Permit 20160246 and associated documents	Sent by Red Textas Consulting Building Surveyors to the Shire, including application for building permit.	<a href="#">MSC.5002.0001.1357</a>
02/12/2020	Handwritten itemised amendments	Itemised amendments for a deck, including hand drawing for handrail, footings, baluster, loading, bearer, joists (including calculations and measurements).	<a href="#">MSC.5014.0001.0097</a> <a href="#">MSC.5010.0001.0032</a>
Undated	Hand drawn plans	Hand drawn plans of proposed works to deck.	<a href="#">MSC.5010.0001.0034</a>
04/12/2020	Application to amend a planning permit under secondary consent	Application for the installation of a small (2.7m x 2.7m) timber deck and handrail (engineered) to edge of garden.	<a href="#">MSC.5010.0001.0020</a> <a href="#">MSC.5010.0001.0021</a>
	Letter from Gerrard Borghesi regarding proposed timber deck	Letter outlines proposed construction of timber deck.	<a href="#">MSC.5014.0001.0096</a>
Undated	Plans prepared by JDA Architects dated 21/09/2015 with annotations	The annotations relate to the proposed deck.	<a href="#">MSC.5001.0001.4775</a>



Date	Document type	Description	Document ID
Various	Endorsed Plan provided to the Shire	Bundle of documents including plans and colour and finishes schedule.	<a href="#">MSC.5003.0001.3956</a>
17/05/2021	Application to amend a planning permit under secondary consent	The Shire received an application seeking to amend the planning permit in relation to the roof tiles. I understand that the application was withdrawn on 10 August 2021.	<a href="#">MSC.5014.0001.0104</a>
<b>Other documents</b>			
29/08/2022	Letter from Gerrard Borghesi to Council	Letter regarding proposed earthworks.	<a href="#">MSC.5002.0001.1456</a>

## 2 Penny Lane and 3/613 Point Nepean Road

21. As stated in my response to question 5.3, 2 Penny Lane and 3/613 Point Nepean Road appear to have been constructed on lots resulting from the subdivision of the parcel of land at 611-613 Point Nepean Road. In the time available, I have located the following construction plans or other planning documents submitted to the Shire for the purpose of construction on the properties at 2 Penny Lane and 3/613 Point Nepean Road.
22. There also exist other documents relating to the former parcel of land at 611-613 Point Nepean Road before subdivision. These have not been included in the table below because they are not relevant to the properties as they currently exist as 2 Penny Lane and 3/613 Point Nepean Road, but this information can be provided to the Board of Inquiry if it would assist.

Date	Document type	Description	Document ID
17/03/2003	Letter from Peninsula Planning Consultants Pty Ltd to Council	Letter regarding a proposed petrol station redevelopment, with a request to extend Planning Permit P2406/96.	<a href="#">MSC.5001.0001.2010</a>
04/09/2004	Endorsed plans for 611-615 Point Nepean Road, McCrae prepared by Peter Hendy	Endorsed plans for the construction of units at 611-615 Point Nepean Road, McCrae, including colour and materials schedule.	<a href="#">MSC.5001.0001.4047</a>
05/09/2004	Application for amendment to Planning Permit P04/1497	Application to amend planning permit in respect of the final roofing and colour scheme as per material schedule attached.	<a href="#">MSC.5002.0001.6966</a>
01/02/2005	Unit drainage drawings prepared by Jamison & Craig Consultants Pty Ltd	Unit drainage drawings for development at 611-613 Point Nepean Road, McCrae, including engineering approval for stormwater drainage and allied works.	<a href="#">MSC.5002.0001.6965</a>

Date	Document type	Description	Document ID
22/02/2005	Building Project Specifications for 611-615 Point Nepean Road, McCrae	Building Project Specifications, including drawings/plans for 611-615 Point Nepean Road, McCrae prepared by Peter Hendy.	<a href="#">MSC.5014.0001.1217</a>
22/03/2005	Application for planning permit made by Brian Moxham Surveying Pty Ltd	Application for planning permit for five lot subdivision at 611-615 Point Nepean Road, McCrae.	<a href="#">MSC.5015.0001.0006</a>
24/03/2005	Subdivision application checklist for 611-615 Point Nepean Road	Subdivision application checklist for Applicant 280352 signed by J Moxham.	<a href="#">MSC.5015.0001.0008</a>
	Application for certification under the Subdivision Act 1988 for 611-615 Point Nepean Road	Application for certification of plan of subdivision for 611-615 Point Nepean Road, McCrae made by Brian Moxham Surveying Pty Ltd.	<a href="#">MSC.5015.0001.0004</a>
01/04/2005	Letter from VicRoads to the subdivision officer at the Shire	Letter providing consent to a planning permit for subdivision at 611-613 Point Nepean Road, McCrae and certification of the Plan of Subdivision.	<a href="#">MSC.5015.0001.0002</a>
05/04/2005	Letter from Origin Energy to the subdivision officer at the Shire	Letter providing consent to planning permit for subdivision at 611-615 Point Nepean Road, McCrae and issuance of a statement of compliance.	<a href="#">MSC.5015.0001.0003</a>
12/04/2005	Letter from United Energy Distribution to the subdivision officer at the Shire	Letter providing conditional consent to the issue of a planning permit for 611-613 Point Nepean Road, McCrae.	<a href="#">MSC.5015.0001.0001</a>
15/04/2005	Letter from South East Water to Stephen Joy at the Shire	Letter providing consent to a town planning permit in relation to water supply and sewerage for 611-613 Point Nepean Road, McCrae.	<a href="#">MSC.5015.0001.0022</a>
02/05/2005	Letter from Telstra to Town Planning at the Shire	Letter providing conditional consent to subdivision for 611-613 Point Nepean Road, McCrae.	<a href="#">MSC.5015.0001.0021</a>
12/05/2005	Plan of subdivision PS 508696 C prepared by Brian Moxham Surveying Pty Ltd	Plan of subdivision for 611-615 Point Nepean Road, McCrae.	<a href="#">MSC.5015.0001.0017</a>
03/06/2005	Advice by licenced surveyor regarding subdivision 508696 C under s 20A of the Subdivision Act 1988 prepared by Brian Moxham Pty Ltd	Advice stating plan of subdivision confirms with legislative requirements and is accurate.	<a href="#">MSC.5015.0001.0016</a>
15/06/2005	Plan of subdivision PS 508696 C prepared by Brian Moxham Surveying Pty Ltd	Plan of subdivision for 611-615 Point Nepean Road, McCrae, with creation of restriction requiring construction of a dwelling only in accordance with Planning Permit P04/1497.	<a href="#">MSC.5015.0001.0012</a>

**Question 6****As at November 2022, identify:**



- 6.1 the applicable planning scheme zone that applied to the land on which each Affected Property was situated;
- 6.2 the planning scheme overlay(s) that applied to the land on which each Affected Property was situated; and
- 6.3 any planning permits that were issued by the Shire in respect of each Affected Property and the nature of work undertaken pursuant to those permits.

23. In preparing my answer to question 6, I have accessed information held by or available to the Shire.

6.1 The applicable planning scheme zone that applied to the land on which each Affected Property was situated

24. The applicable planning scheme zone that applied to the land on which each Affected Property was situated as at November 2022 is set out in the table below.

Address of Affected Property	Applicable planning scheme zone	Document Date	Document type	Nuix Document ID
10-12 View Point Road MCCRAE VIC 3938	MPPS clause 32.08, General Residential Zone, Schedule 1	14/01/2022	Mornington Peninsula Planning Scheme – Local Provision: Zones Map No 27	<a href="#">MSC.5009.0001.0067</a> <a href="#">MSC.5009.0001.0049</a> <a href="#">MSC.5009.0001.0061</a>
3/613 Point Nepean Road MCCRAE VIC 3938	MPPS clause 32.08, General Residential Zone, Schedule 1	14/01/2022	Mornington Peninsula Planning Scheme – Local Provision: Zones Map No 27	<a href="#">MSC.5009.0001.0067</a> <a href="#">MSC.5009.0001.0049</a> <a href="#">MSC.5009.0001.0061</a>
2 Penny Lane MCCRAE VIC 3938	MPPS clause 32.08, General Residential Zone, Schedule 1	14/01/2022	Mornington Peninsula Planning Scheme – Local Provision: Zones Map No 27	<a href="#">MSC.5009.0001.0067</a> <a href="#">MSC.5009.0001.0049</a> <a href="#">MSC.5009.0001.0061</a>

6.2 The planning scheme overlay(s) that applied to the land on which each Affected Property was situated

25. The planning scheme overlays that applied to the land on which each Affected Property was situated as at November 2022 are set out in the table below.

Address of Affected Property	Applicable planning scheme overlays	Document Date	Document type	Nuix Document ID
10-12 View Point Road MCCRAE VIC 3938	Design and Development Overlay Design and Development Overlay – Schedule 3	26/07/2012	Mornington Peninsula Planning Scheme – Location Provision: Design and Development Overlay Map No 27DDO	<a href="#">MSC.5009.0001.0035</a> <a href="#">MSC.5009.0001.0038</a>
	Vegetation Protection Overlay	31/08/2007	Mornington Peninsula Planning	<a href="#">MSC.5009.0001.0068</a> <a href="#">MSC.5009.0001.0073</a>

Address of Affected Property	Applicable planning scheme overlays	Document Date	Document type	Nuix Document ID
	Vegetation Protection Overlay – Schedule 1		Scheme – Location Provision: Vegetation Protection Overlay Map No 27VPO	
	Environmental Significance Overlay Environmental Significance Overlay – Schedule 25	29/08/2007	Mornington Peninsula Planning Scheme – Location Provision: Environmental Significance Overlay Map No 27ESO24_27	<a href="#">MSC.5009.0001.0042</a> <a href="#">MSC.5009.0001.0047</a>
3/613 Point Nepean Road MCCRAE VIC 3938	Environmental Audit Overlay	29/08/2007	Mornington Peninsula Planning Scheme – Location Provision: Environmental Audit Overlay Map No 27EAO	<a href="#">MSC.5009.0001.0064</a>
	Design and Development Overlay Design and Development Overlay – Schedule 3	26/07/2012	Mornington Peninsula Planning Scheme – Location Provision: Design and Development Overlay Map No 27DDO	<a href="#">MSC.5009.0001.0035</a> <a href="#">MSC.5009.0001.0038</a>
	Vegetation Protection Overlay Vegetation Protection Overlay – Schedule 1	31/08/2007	Mornington Peninsula Planning Scheme – Location Provision: Vegetation Protection Overlay Map No 27VPO	<a href="#">MSC.5009.0001.0068</a> <a href="#">MSC.5009.0001.0073</a>
	Environmental Significance Overlay Environmental Significance Overlay – Schedule 25	29/08/2007	Mornington Peninsula Planning Scheme – Location Provision: Environmental Significance Overlay Map No 27ESO24_27	<a href="#">MSC.5009.0001.0042</a> <a href="#">MSC.5009.0001.0047</a>
2 Penny Lane MCCRAE VIC 3938	Environmental Audit Overlay	29/08/2007	Mornington Peninsula Planning Scheme – Location Provision: Environmental Audit Overlay Map No 27EAO	<a href="#">MSC.5009.0001.0064</a>
	Design and Development Overlay Design and Development Overlay – Schedule 3	26/07/2012	Mornington Peninsula Planning Scheme – Location Provision: Design and Development Overlay Map No 27DDO	<a href="#">MSC.5009.0001.0035</a> <a href="#">MSC.5009.0001.0038</a>



Address of Affected Property	Applicable planning scheme overlays	Document Date	Document type	Nuix Document ID
	Vegetation Protection Overlay Vegetation Protection Overlay – Schedule 1	31/08/2007	Mornington Peninsula Planning Scheme – Location Provision: Vegetation Protection Overlay Map No 27VPO	<a href="#">MSC.5009.0001.0068</a> <a href="#">MSC.5009.0001.0073</a>
	Environmental Significance Overlay Environmental Significance Overlay – Schedule 25	29/08/2007	Mornington Peninsula Planning Scheme – Location Provision: Environmental Significance Overlay Map No 27ESO24_27	<a href="#">MSC.5009.0001.0042</a> <a href="#">MSC.5009.0001.0047</a>

**6.3 Any planning permits that were issued by the Shire in respect of each Affected Property and the nature of work undertaken pursuant to those permits.**

26. In order to provide a response to question 6.3, I have caused to be conducted searches of the Shire's records relating to each Affected Property.
27. In the time available to prepare this witness statement, an exhaustive search of the Shire's records has not been possible. As such, the information below may be incomplete. I understand that searches to identify any further relevant information in answer to this question are ongoing. If further information is identified, it will be made available to the Board of Inquiry as soon as possible.
28. The table below records the information I have been able to obtain in the time available about any planning permits that were issued by the Shire in respect of each Affected Property.

**10-12 View Point Road**

Planning permit reference	Date	Description	Nuix Document ID
P15/0321	23/04/2015	Planning permit issued by the Shire for the removal of vegetation. A tree to the rear was approved to be removed. Conditions 1 and 2 of the planning permit allowed the holder to only clear vegetation to the extent provided by the endorsed plans issued by Council on 23 April 2015, and required the holder to revegetate the disturbed land with species indigenous to the "local Ecological Vegetation Class".	<a href="#">MSC.5002.0001.1464</a>
P15/0321.01	08/04/2015	The life of this P15/0321 was extended so that the latest date for completion of the development was 23 April 2017.	<a href="#">MSC.5002.0001.1487</a>
P15/1503	15/12/2015	Planning Permit issued by the Shire, allowing dwelling additions, alterations, an outbuilding, fencing and associated works including retaining walls. Approximately 6 trees approved to be removed under the permit, all to the east of the dwelling.	<a href="#">MSC.5002.0001.1484</a>

Planning permit reference	Date	Description	Nuix Document ID
P15/1503.01	18/02/2021	It appears that an amendment was made to Sheet 5 of the Endorsed Plans in respect of Planning Permit P15/1503 relating to 10-12 View Point Road by a Secondary Consent Application P15.1503.01 to reflect an "addition of deck" on or about 18 February 2021. The other sheets in the endorsed plans remain unchanged.	<a href="#">MSC.5003.0001.3964</a> <a href="#">MSC.5001.0001.4775</a>
P15/1503.02	17/05/2021	The Shire received an application seeking to amend the planning permit in relation to the roof tiles. I understand that the application was withdrawn on 10 August 2021.	<a href="#">MSC.5014.0001.0104</a> <a href="#">MSC.5014.0001.0103</a>

### 2 Penny Lane and 3/613 Point Nepean Road

29. As stated in my response to question 5.3, 2 Penny Lane and 3/613 Point Nepean Road appear to have been constructed on lots resulting from the subdivision of the parcel of land at 611-613 Point Nepean Road. In the time available, I have located the following permits that were issued by the Shire in respect of the properties at 2 Penny Lane and 3/613 Point Nepean Road.
30. There also exist other planning permits relating to the former parcel of land at 611-613 Point Nepean Road before subdivision, including P2406/96. These have not been included in the table below because they are not relevant to the properties as they currently exist as 2 Penny Lane and 3/613 Point Nepean Road, and many of these records exist only in hard copy and are stored offsite. However, this information can be provided to the Board of Inquiry if it would assist.

Planning permit reference		Description	Nuix Document ID
P05/0607 S05/5063	12/05/2005	Planning permit issued by the Shire for the subdivision of 611-613 Point Nepean Road into five lots and in accordance with the 13 conditions prescribed by the permit.	<a href="#">MSC.5015.0001.0017</a>
P04/1497	03/09/2004	Planning permit issued by the Shire for the development at 611-613 Point Nepean Road of five units in accordance with endorsed plans and on 24 prescribed conditions.	<a href="#">MSC.5015.0001.0024</a>

### **Question 7**

If any of the planning scheme zone, the planning scheme overlays or the planning permits that applied to each Affected Property had changed within three years of November 2022, explain the nature of the change(s).



31. My response to question 7 is based upon searches I have conducted or caused to be conducted in the time available to prepare this witness statement. In that time, I have not undertaken an exhaustive review of all changes to the planning scheme zone, the planning scheme overlays or the planning permits that applied to each Affected Property. The response below is given to the best of my knowledge and based on information which I have been able to access in the time available, but there may be some changes of which I am unaware or have not been able to recall or obtain information about in the time available. Searches relevant to question 7 are ongoing. If additional records relevant to this question are identified by the Shire, I understand they will be provided to the Board of Inquiry as soon as possible.

#### Changes to the planning scheme zone

32. As stated in response to question 6.1, the planning scheme zone that applied to each Affected Property as at November 2022 was the General Residential Zone.
33. The amendments to the General Residential Zone made November 2019 and November 2022 are reflected in the table below.

Date	Amendment reference	Instrument amended	Description of changes
14/11/2022	<a href="#">VC227</a>	MPPS clause 32.08, General Residential Zone	Made changes to the Victoria Planning Provisions (VPP) and all planning schemes to support the facilitation of container deposit scheme infrastructure under the Victorian Government's, Recycling Victoria: a new economy policy, including making an "Automated collection point" a "Section 1 - Permit not required land use" if the condition is met.
20/12/2021	<a href="#">VC174</a>	MPPS clause 32.08, General Residential Zone	Implemented the revised Better Apartment Design Standards, including introducing a transitional provision for applications lodged before the date of approval of the amendment.
04/12/2020	<a href="#">VC180</a>	MPPS clause 32.08, General Residential Zone	Implemented a fast-track assessment process for new non-government schools and upgrades, including increasing the maximum cost of development for a VicSmart application from \$100,000 to \$500,000 for a non-government primary school or secondary school.
24/01/2020	<a href="#">VC160</a>	MPPS clause 32.08, General Residential Zone	Amended the VPP and all planning schemes to correct errors and omissions, clarify the operation of certain provisions, and implement planning reforms for extractive industries.

#### Changes to the planning scheme overlays

34. As stated in response to question 6.2, four planning scheme overlays applied to one or more of each Affected Property as at November 2022, namely the Environmental Audit Overlay, Design and Development Overlay – Schedule 3, Vegetation Protection Overlay – Schedule 1, and Environmental Significance Overlay – Schedule 25.
35. The amendments to these planning overlays between November 2019 and November 2022 are reflected in the table below.

Date	Amendment reference	Instrument amended	Description of changes
28/10/2022	<a href="#">VC224</a>	MPPS clause 42.01, Environmental Significance Overlay; MPPS clause 42.02, Vegetation Protection Overlay	Made changes to the VPP and all planning schemes that relate to declared irrigation districts and solar energy facilities, delivery exemptions, electorate offices, Future Homes, healthy waterways, land use terms, stormwater management and tree removal under VicSmart.
04/05/2022	<a href="#">VC210</a>	MPPS clause 45.03, Environmental Audit Overlay	Makes changes to the VPP and all planning schemes to ensure they are current and correct obvious or technical errors.
17/02/2022	<a href="#">VC200</a>	MPPS clause 42.01, Environmental Significance Overlay; MPPS clause 42.02, Vegetation Protection Overlay	Introduced exemptions for specified land use and development for transport projects into the VPP and all planning schemes to facilitate transport projects delivered by or on behalf of the State of Victoria.
20/01/2022	<a href="#">VC205</a>	MPPS clause 43.02, Design and Development overlay, Schedule 3	Introduced a new Transport Zone to the VPP and all planning schemes, replacing the Road Zone categories 1 and 2 and Public Use Zone 4, to improve alignment of VPP tools with the <i>Transport Integration Act 2010</i> (Vic). It also made consequential changes to the VPP and all planning schemes to include references to the new zone and associated terminology. The general requirements in the Schedule were updated to reflect the new transport zones.
22/07/2021	<a href="#">C255</a>	MPPS clause 43.02, Design and Development overlay, Schedule 3; MPPS clause 42.01, Environmental Significance Overlay, Schedule 25; MPPS clause 42.02, Vegetation Protection Overlay, Schedule 1	Made corrections to local provisions of the MPPS to reflect reforms introduced by previous amendments and to remove inconsistencies with the Ministerial Direction on the Form and Content of Planning Scheme, as part of the Smart Planning Program.
01/07/2021	<a href="#">VC203</a>	MPPS clause 45.03, Environmental Audit Overlay	Implemented new environment protection legislation and tools in the VPP and all planning schemes, including by updating wording and references, including 'secondary schools' and



Date	Amendment reference	Instrument amended	Description of changes
			'children's playgrounds' in sensitive uses, and integrating new environmental approval requirements and exemptions.

#### Changes to the planning permits issued to an Affected Property

36. The planning permits issued in respect of each Affected Property are set out in the response to question 6.3.
37. In the time available to prepare this witness statement, I have been able to identify only:
- (a) that it appears that an amendment was made to Sheet 5 of the Endorsed Plans in respect of Planning Permit P15/1503 relating to 10-12 View Point Road by a Secondary Consent Application P15.1503.01 to reflect an "addition of deck" on or about 18 February 2021. The other sheets in the endorsed plans remain unchanged; and
  - (b) an amendment to Planning Permit P04/1497 issued in respect of the land at 611-613 Point Nepean Road, McCrae, issued on 5 September 2004. This amendment changed the final roofing and colour scheme in accordance with a material schedule.
38. Searches will continue to identify any further relevant information.

#### Question 8

**Exhibit the current planning certificate in relation to each Affected Property.**

39. In responding to question 8, I have caused to be conducted searches for the current planning certificates for each Affected Property.
40. The results of those searches are recorded in the table below:

Address of Affected Property	Document Title	Document Date	Document type	Document number
10-12 View Point Road MCCRAE VIC 3938	Planning Certificate No 1128529 for 10-12 View Point Road McCrae 3938	9 April 2025	Planning Certificate	<a href="#">MSC.5010.0001.0016</a>

Address of Affected Property	Document Title	Document Date	Document type	Document number
3/613 Point Nepean Road MCCRAE VIC 3938	Planning Certificate No 1128540 for 3/613 Point Nepean Road McCrae 3938	9 April 2025	Planning Certificate	<a href="#">MSC.5010.0001.0018</a>
2 Penny Lane MCCRAE VIC 3938	Planning Certificate No 1128536 for 2 Penny Lane McCrae 3938	9 April 2025	Planning Certificate	<a href="#">MSC.5010.0001.0014</a>

#### General approach to addressing risk of landslide or landslip as at 1 November 2022

##### Question 10

**As at 1 November 2022, how were decisions made by the Shire about which land should be subject to the Erosion Management Overlay?**

41. There are currently six EMOs in the Shire (contained in MPPS cl 44.01 Schedules 1 – 6). To the best of my knowledge, these overlays have been progressively introduced to the MPPS since the 1970s and are generally based on area specific geotechnical studies.
42. EMO1 'Erosion Prone Slopes' (cl 44.01 at Schedule 1) affects much of the hinterland (Arthurs Seat, Rosebud, Red Hill, Main Ridge to Flinders) and EMO2 'Unstable Slopes' (cl 44.01 at Schedule 2) affects other areas of Arthurs Seat, Rosebud and Flinders. To the best of my knowledge, these areas were identified sometime in the 1970s by the former Flinders Planning Scheme.
43. EMO3 (cl 44.01 at Schedule 3) was introduced via Amendment C017 in December 2000 to land in the vicinity of Ballar Creek. In preparing this witness statement I have been shown a copy of the explanatory report for Amendment C017 which identifies that amendment was based on a report titled "Mornington Peninsula Shire Council Landslide Zoning, Ballar Creek, Mt Eliza, Victoria" dated 11 July 2000. A copy of the explanatory report to Amendment C017 is at [\[MSC.5014.0001.0076\]](#).
44. EMO4 'Landslide Susceptibility Area A' (cl 44.01 at Schedule 4) and EMO5 'Landslide Susceptibility Area B' (cl 44.01 at Schedule 5) were introduced via Amendment C105 in January 2011 to land in the vicinity of Tanti Creek and Flinders township. In preparing this witness statement I have been shown a copy of the explanatory report for Amendment C105 which identifies that amendment was based on several studies concerning Tanti Creek, including a Geotechnical Investigation of Stability of Creek Banks, Tanti Creek, by Piper and



- Associates in 2006, and separately concerning Flinders a Geotechnical Assessment for Landslip Risk, Flinders Foreshore, by Piper and Associates in 2007. A copy of the explanatory report to Amendment C105 is at [\[MSC.5014.0001.0082\]](#).
45. I note, for completeness, that EMO6 'Erosion Hazard – Beach and Foreshore Areas' (cl 44.01 at Schedule 6) was introduced via Amendment C271morn in January 2025, after the date range in the question. However, for completeness, a copy of the explanatory report for Amendment C271morn is at [\[MSC.5014.0001.0092\]](#).
46. In preparing this witness statement I have been shown a copy of the witness statement of Bulant Oz. In Mr Oz's witness statement, in answer to question 1, Mr Oz refers to the Shire's additional controls imposed by the Shire for properties identified in the GIS as falling within the red zone of high landslide susceptibility.
47. In this regard, I note that the existing EMO schedules (i.e., EMO1-6) do not cover all land that is within the red zone of high landslide susceptibility as reflected in the GIS. To the best of my knowledge and understanding, decisions about which land should be made subject to the EMO are generally made through the process of the Shire's regular reviews of the MPPS.
48. Pursuant to the P&E Act, the Shire reviews the provisions of the MPPS regularly. The most recent review prior to 1 November 2022 was the Mornington Peninsula Planning Scheme Review No. 4, adopted by Council (Planning Services Committee) on 19 November 2018 (**the 2018 Review**). A copy is at [\[MSC.5014.0001.0182\]](#).
49. The 2018 Review considers the EMO and the (then) five EMO schedules at Part 12.6. This led to two recommendations:
- (a) Recommendation 210: to merge the application requirements of EMO3 into EMO1, delete the schedules for EMO 2 and EMO 3, and re-number mapping of EMO2 and EMO3 to EMO1.
  - (b) Recommendation 211: complete the comprehensive review and update of the Shire's landslip susceptibility data and modelling, and update the ordinance and mapping of the Shire's EMO.
50. I note that the implementation plan within the 2018 Review at Appendix 6 contained an implementation plan which listed the "timing" for recommendations 210 and 211 as "2020/2021".
51. A subsequent review was conducted by the Shire in 2023 - the Mornington Peninsula Planning Scheme Review No. 5 2023 (which as I understand it was adopted by Council on 30 April 2024) (**the 2023 Review**). A copy is at [\[MSC.5014.0001.0532\]](#).

52. The 2023 Review referred to various events that had occurred between the 2018 Review and the 2023 Review. It noted that outstanding items from the 2018 Review included "Landslip susceptibility: a review of the Shire's landslip susceptibility data and modelling is required to inform necessary changes to the Environmental Management Overlay" (p 25, see also p 102). This was reiterated at chapter 9, regarding key issues and further strategic work (p 96).
53. The 2023 Review contained an Audit of the 2018 Review at Appendix A. It identified that implementation of Recommendations 210 and 211 of the 2018 Review had not yet started. The 2023 Review also contained a priority implementation plan at Appendix 3. That plan identified that implementation of Recommendation 211 from the 2018 Review had not yet started. It assigned recommendation 211 a priority rating of "medium".
54. In the time available in preparing this witness statement, I have not otherwise been able to ascertain further information beyond what is contained in the 2018 Review and the 2023 Review in relation to how decisions were made in respect of which land should be subject to the EMO. However, I understand that the Shire and its legal representatives will continue to investigate these matters so that all relevant documents can be provided to the Board of Inquiry as soon as possible.

#### **Question 14**

**For the three-year period until November 2022, for each of Penny Lane, Margaret Street, View Point Road, Prospect Hill Road and the Eyrie, in McCrae, please provide a table which includes:**

**14.1 a description of any:**

- (a) roadworks performed to repair pot holes or other sunken parts of the road or footpath; and**
- (b) stormwater works performed to address any drainage issues;**

**14.2 the location of the works;**

**14.3 the date those works were performed; and**



#### 14.4 any photographs depicting the location before and after the works were performed.

55. My answer to question 14 is based upon records of roadworks and stormwater works undertaken by the Shire that I have been able to access in the time available to prepare this witness statement. I was not involved in any of these works, and any such works were managed by the Assets and Infrastructure department of the Shire.
56. A particular limitation in accessing data relevant to question 14 in the time available has been the fact that much of the data is held by a third-party contractor. During the three-year period until November 2022, the Shire had a contract with Emoleum, a partnership between Emoleum Roads Group Pty Ltd and Emoleum Road Services Pty Ltd (which was subsequently acquired by Downer EDI Works Pty Ltd (**Downer**), which trades under the business names DM Roads) for services relating to the maintenance and management of the network of roads in the Shire (a copy of the Safer Local Roads Contract CN 1218 between the Shire and Emoleum dated 30 June 2006 is at [\[MSC.5014.0001.0725\]](#) a copy of the Deed of Novation, Varian and Extension dated 30 June 2021 is at [\[MSC.5014.0001.0676\]](#) and a copy of the Deed of Extension and Variation dated 4 May 2023 is at [\[MSC.5014.0001.0707\]](#). That contract ended on 30 June 2024 (collectively, the **Contract**). The Contract ended on 30 June 2024.
57. At 9:12am on 8 April 2025, the Shire requested from Downer access to records relevant to question 14, requesting that any information be provided by the close of business on that date (a copy of the email from the Shire to Downer dated 8 April 2025 is at [\[MSC.5014.0001.0673\]](#)). In its request, the Shire relied on (primarily) clause 23 of the Contract, which provides that: "[t]he Contractor must report in writing to the Service Management Team on any aspect of the Services when requested to do so". Under the Contract, "[t]he Contractor" is defined as Emoleum, and the "Service Management Team" is defined as the team identified in clause 9, which includes employees of the Shire (clause 9.4A and Annexure 1 of the Contract with Emoleum; Sch 1 of the Deed of Extension and Variation).
58. On 9 April 2025, Downer advised the Shire that, due to the short response timeframe, it had not been able to undertake a comprehensive review of the potential material available. However, relevantly to the present question it provided a spreadsheet containing details of activities performed during the period November 2019 to November 2022 on Penny Lane, Margaret Street, View Point Road, Prospect Hill Road and the Eyrie in the suburb of McCrae (a copy of the letter from Downer to the Shire dated 9 April 2025 is at [\[MSC.5014.0001.0675\]](#), and a copy of the relevant spreadsheet provided by Downer is at [\[MSC.5014.0001.1160\]](#)).
59. In addition to the above, the Shire has conducted searches of its own records in the time available, which have returned the following data:

- (a) records from the Shire's Geomedia Smart Client System (a copy of which is at [\[MSC.5014.0001.1162\]](#)).
- (b) records from data transferred to the Shire from Downer at the end of the Contract (a copy of which is at [\[MSC.5014.0001.1161\]](#)).
60. Due to the short timeframe in which to prepare this witness statement, an exhaustive search of the Shire's records has not been possible, and there may be records that have not been picked up in the searches able to be conducted and which otherwise bear on question 14. If additional records relevant to this question are identified by the Shire, I understand they will be provided to the Board of Inquiry as soon as possible.
61. A further limitation on my response is the brevity of the information contained in the records I have accessed. These records are primarily created by employees of the Contractor during the performance of works, and contain only brief notes on those works. It has not been possible in the time available to prepare this witness statement to obtain information to expand on or verify the information contained in the records I have accessed, and as a result some of the information below may be incomplete.
62. The tables below set out the data extracted from the records described above.

Penny Lane – 1 November 2019 to 31 November 2022

Works performed (roadworks or stormwater with description)	Location of works	Date of works	Photographs of location prior to works	Photograph of location after works
Gravel patch to repair pothole on depth >35mm for 30 percentage of area of formation (ie road block of 100m) on unsealed road.	Penny Lane west	10 June 2020	N/A	N/A



<b>Works performed (roadworks or stormwater with description)</b>	<b>Location of works</b>	<b>Date of works</b>	<b>Photographs of location prior to works</b>	<b>Photograph of location after works</b>
Grading unsealed road with gravel patch to repair pothole, where defect exceeded 35mm in depth for >30 percentage of area of formation (ie road block of 100m). Bobcat gravel patching required to fill pothole with three or four buckets.	On Penny Lane west, 20m in from Point Nepean Road	20 August 2021	N/A	N/A
Grading unsealed road with gravel patch to repair pothole, where defect exceeded 35mm in depth for >30 percentage of area of formation (ie road block of 100m).	Penny Lane West	8 August 2022	N/A	N/A

Margaret Street– 1 November 2019 to 31 November 2022

<b>Works performed (roadworks or stormwater with description)</b>	<b>Location of works</b>	<b>Date of works</b>	<b>Photographs of location prior to works</b>	<b>Photograph of location after works</b>
Gravel patch to repair depressions of >35mm for 30 percentage of area of formation of unsealed road.	Area near or adjacent to the concrete driveway of 8 Margaret Street	24 November 2020	N/A	N/A

View Point– 1 November 2019 to 31 November 2022

<b>Works performed (roadworks or stormwater with description)</b>	<b>Location of works</b>	<b>Date of works</b>	<b>Photographs of location prior to works</b>	<b>Photograph of location after works</b>
Repair pothole of depth >50mm or lateral dimension >200mm.	View Point Road, where speed hump meets the kerb	9 June 2022	N/A	N/A
Repair pothole of depth >50mm or lateral dimension >200mm, involving filling a speed hump where it was cut.	View Point Road, speedhump	28 June 2022	N/A	N/A

Prospect Hill Road– 1 November 2019 to 31 November 2022

<b>Works performed (roadworks or stormwater with description)</b>	<b>Location of works</b>	<b>Date of works</b>	<b>Photographs of location prior to works</b>	<b>Photograph of location after works</b>
Repair pothole of depth >50mm diameter >200mm.	Besides kerb outside 14 Prospect Hill Road	4 March 2020	N/A	N/A
Repair pothole of depth >50mm or lateral dimension >200mm (bike lanes >20mm).	Outside 1 Prospect Hill Road	19 April 2021	N/A	N/A

The Eyrie– 1 November 2019 to 31 November 2022

<b>Works performed (roadworks or stormwater with description)</b>	<b>Location of works</b>	<b>Date of works</b>	<b>Photographs of location prior to works</b>	<b>Photograph of location after works</b>
Sinkhole in driveway made safe with stake and parawebbing by Rapid Response Team for the southern peninsula.	17 The Eyrie	14 September 2022	N/A	N/A
Minor repair to linked drains. Investigated sinkhole and found displaced pipe; repaired and reinstated all areas affected.	17 The Eyrie	11-12 October 2022	N/A	N/A

**Question 15**



**Before 1 November 2022, what (if any) risk assessments were undertaken or commissioned by the Shire to determine the likelihood and severity of landslides and landslips in the McCrae Area? Exhibit key documents recording the finding(s) of the risk assessment(s).**

#### **Cardno 2012 GIS Assessment**

63. I am aware that the Shire commissioned a study into landslide susceptibility of areas across the Shire, being the Cardno 2012 GIS Assessment. In this regard, I refer to paragraph 40 to 42 of Mr Oz's statement in response to question 1.
64. The study was commissioned before my time at the Shire. It is, however, my understanding that the Cardno 2012 GIS Assessment involved the preparation of parameter maps for geology, cadastre, digital terrain, landslides and standing groundwater depths for inclusion in a Geographical Information System (GIS).
65. The assessment produced a landslide susceptibility map for the Shire. The assessment classified areas of the Shire into subjective zones of 'high', 'medium' and 'low' landslide susceptibility.
66. I have read a conference paper by Piper, J.P. and Slade, D.B. (2012) GIS Assessment of Regional Landslide Susceptibility, Mornington Peninsula Shire, in Prof. G Narsilo, Prof. A Arulrajah and Prof. J Kodikara (Eds.), 11th Australia New Zealand Conference on Geomechanics, ISSMGE. <https://www.issmge.org/publications/online-library> (**Piper and Slade Paper**) [MSC.5001.0001.6105]. The Piper and Slade Paper summarises the work undertaken as part of the Cardno 2012 GIS Assessment.
67. It is my understanding that the Cardno 2012 GIS Assessment did not look at the likelihood (or probability) of landslides, or landslips or the severity of landslides or landslips, in the McCrae Area.

#### **Other assessments**

68. In the time available to prepare this witness statement, I have not been able to identify what (if any) risk assessments were undertaken or commissioned by the Shire to determine the likelihood and severity of landslides and landslips in the McCrae Area.
69. To the best of my knowledge and understanding, in the period I have been with the Shire, the Shire has not undertaken any risk assessments to determine the likelihood and severity of landslides and landslips in the McCrae Area.
70. However, I will continue to cause further investigations to be undertaken within the Shire to ascertain this answer if possible.

**Question 16**

**Describe any changes made to the Shire's practices or procedures as a result of the risk assessment(s) referred to in paragraph 15 above, including the approximate date.**

71. I refer to paragraphs 43 to 44 of Mr Oz's witness statement in response to question 1 where Mr Oz refers to the Cardno GIS Assessment and the Shire's practice of using the GIS at the planning control stage to identify the level of geotechnical investigation required in support of a planning application. I understand from Mr Oz's evidence that this was a practice put in place some period of time after the Cardno GIS Assessment was concluded in 2012. It was a practice in place when I commenced at the Shire.
72. Where land the subject of a planning application is identified as 'high' landslide susceptibility, it has been the Shire's practice to require that the planning application to be accompanied by a geotechnical report in accordance with Australian Geomechanics Society's (AGS) 'Practice Note Guidelines for Landslide Risk Management 2007'. The geotechnical report is required to be peer reviewed and the peer review must also be submitted to the Shire before the determination of the permit application.
73. I refer to my response to Question 15. In the time available to prepare this witness statement, I have not been able to identify what (if any) other changes have been made to the Shire's practices or procedures as a result of any other risk assessment.

**Question 17**

**Before November 2022, did the Shire experience any challenges to implementing measures to prevent or mitigate landslides and landslips in the McCrae Area?**

74. The Shire's ability to implement measures to prevent or mitigate landslides and landslips in the McCrae Area needs to be considered in the context of its key functions, namely planning controls, emergency management and planning and response, building surveyor management, and infrastructure maintenance.
75. An effective control to prevent or mitigate landslip and erosion is the EMO, although the EMO cannot be used to prevent or mitigate existing risk associated with an existing use or development of land or any other unauthorised development that the Shire is not aware of. The 2018 Review considered the EMO and the (then) five EMO schedules at Part 12.6. This led to Recommendations 210 and 211. In this regard, I refer to my response to Question 10.
76. The 2023 Review referred to various events that had occurred between the 2018 Review and the 2023 Review. It noted that outstanding items from the 2018 Review included "Landslip susceptibility: a review of the Shire's landslip susceptibility data and modelling is required to



inform necessary changes to the Environmental Management Overlay" (p 25, see also p 102). This was reiterated at chapter 9, regarding key issues and further strategic work (p 96).

77. In the time available in preparing this witness statement, beyond what is set out in the 2018 Review and the 2023 Review, I have not been able to ascertain what challenges were or may have been encountered by the Shire in implementing recommendations concerning the EMO. However, I understand that the Shire and its legal representatives will continue to investigate these matters so that all relevant documents can be provided to the Board of Inquiry as soon as possible.
78. Another measure, which also is aimed at preventing or mitigating landslides and landslips, is the Shire's practice to require additional geotechnical input on all properties that are mapped as falling within the red (i.e., high susceptibility) zone as set out in the GIS. In this regard, I refer to my response to Questions 15 and 16. I am aware through my role that it is a practice that the Shire has adopted at the planning stage as an additional precautionary measure. To the best of my knowledge, the practice is consistently employed and there have been no specific challenges to implementing that practice.

#### **November 2022 Landslide**

##### **Question 21**

**Describe the November 2022 Landslide, including:**

- 21.1 describing the extent of the damage to each Affected Property; and**
- 21.2 identifying other properties damaged by the November 2022 Landslide (Other Properties) and the extent of such damage.**

#### **Description of the November 2022 Landslide**

79. A description of the November 2022 Landslide is contained in the technical memorandum of Mr Davin Slade of Stantec Australia (Ref No. V220600Report01.1) dated 7 December 2022 (**Stantec Report**) [[MSC.5000.0001.0292](#)] at sections 3 and 4. The Shire engaged Stantec on 15 November 2022 to inspect the November 2022 Landslide and provide a geotechnical engineering opinion on the suitability of emergency orders in respect of the residences in the nearby area.
80. Mr Slade describes the November 2022 Landslide as follows:
- (a) the November 2022 Landslide involved two parts:

- (b) a translational slide in the upper soils overlying the underlying completely weathered granite of the upper slope to the rear (north) of the house at 10-12 View Point Road (see sections 3 and 4.1 of Stantec Report); and
- (c) a debris flow initiated in the accumulation zone of the translational slide which flowed downslope across Penny Lane and into the properties situated at 3/613 Point Nepean Road and '3 Penny Lane' (see sections 3 and 4.2 of Stantec Report). Based on my understanding of the addresses of the Affected Properties, the reference to '3 Penny Lane' at section 3 (page 2) and on Figure 4-6 (page 8) should be '2 Penny Lane';
- (d) the translational slide likely occurred in late afternoon on Monday 14 November 2022 and may have been relatively moderate to rapid in nature (i.e. in the order of metres per hour to metres per minute) (see section 3 of Stantec Report);
- (e) the thickness of the soil overlying the weather granite in the translational slide was relatively shallow, possibly less than 0.5m (see section 4.1 of Stantec Report); and
- (f) the debris flow likely occurred in the early morning on Tuesday 15 November 2022 and would have been very rapid to extremely rapid (i.e. in the order of metres per second) (see section 3 of Stantec Report).

81. The following image is taken from Stantec Report (see Figure 3-1) and is stated by Mr Slade to be an oblique view of the site of the November 2022 Landslide showing the location of the two parts of the November 2022 Landslide:



Figure 3-1: Oblique view of landslides



82. A further description of the November 2022 Landslide is contained in the PSM Liability Report [\[MSC.5000.0001.0639\]](#) at section 5. The Shire engaged PSM in around October 2023, through its then solicitors Harwood Andrews, to provide an opinion on (among other matters) the cause of the November 2022 Landslide.
83. Mr Pope has expressed the opinion that the characteristics of the November 2022 Landslide observed by PSM were in general agreement with those described in Stantec Report: PSM Liability Report, [41].
84. Mr Pope describes the November 2022 Landslide (at [38]-[41]) of the PSM Liability Report [\[MSC.5000.0001.0639\]](#) as follows:
- (a) the landslide initiated in the upper to middle portion of the slope, with the rear scarp approximately at the base of the stairs;
  - (b) it was inferred to have initiated as a translational slide followed by mobilisation of failed material into a debris flow which was deposited at the toe of the slope;
  - (c) the November 2022 Landslide had three distinct zones being:
    - (i) a steep 'Upper Zone' where the initial translational sliding occurred with approximate dimensions of 8 to 10 m wide x 8 to 10 m long x 0.3 m thick, Photo 3 Appendix E of the PSM Liability Report;
    - (ii) a steep 'Middle Zone' approximately 15 m long by 3 m wide through which the debris flow travelled, with some scour and erosion, Photo 3 Appendix E of the PSM Liability Report; and
    - (iii) a flatter 'Lower Zone' of debris runout where the debris flow deposited at the toe of the slope, Photo 3 Appendix E of the PSM Liability Report. The approximate dimensions of deposited debris are 8 to 10 m wide, 9 to 10 m long, and 0.2 to 0.7 m thick; and
  - (d) the following soils were observed and logged in the November 2022 Landslide area:
    - (i) Residual Granite on the failure surface in the Upper Zone;
    - (ii) Surficial sands were found to cover the upper escarpment slope;
    - (iii) Possible older (pre November 2022 Landslide) Colluvium was observed in the lower slopes; and
    - (iv) Newer Colluvium was observed in the debris flow deposits.

85. The following image is taken from PSM Liability Report (see Inset 1) and shows the approximate extent of the November 2022 Landslide. 'P1' is 10-12 View Point, 'P2' is 2 Penny Lane, and 'P3' is 3/613 Point Nepean Road:



Inset 1: Plan of properties affected by the Landslide (Aerial Image from Nearmap dated 25 August 2023).



### Damage to each Affected Property

86. The Initial Inspection Reports of Ben Essing, a Senior Building Surveyor (Building Surveyor Unlimited), dated 21 November 2022 record some damage to each Affected Property. These Initial Inspection Reports are:
- (a) 10-12 View Point Road – [\[MSC.5007.0003.1240\]](#);
  - (b) 3/613 Pt Nepean Road - [\[MSC.5007.0003.0348\]](#); [\[MSC.5007.0003.1517\]](#); and
  - (c) 2 Penny Lane - [\[MSC.5007.0003.0447\]](#).
87. The Stantec Report [\[MSC.5000.0001.0292\]](#) also describes some damage to each Affected Property.
88. Having regard to the Initial Inspection Reports referred to at [86] above and the Stantec Report, I understand the damage to each Affected Property to be as follows:
- (a) **10-12 View Point Road:** depletion of the upper soils of the rear of the property; and potential damage to an irrigation pipe;
  - (b) **3/613 Pt Nepean Road:** accumulation of debris flow into the rear of the property, extending to against the rear of the external of the dwelling (approximately 0.5 metres in height); and partial fence collapse; and
  - (c) **2 Penny Lane:** accumulation of debris flow into the rear of the property; and partial fence collapse.
89. In addition to the Affected Property, there was an accumulation of debris flow across Penny Lane, which area is owned by the Shire.
90. It is my understanding there was no structural damage to the dwellings at any Affected Property.

### Other Properties

91. To the best of my knowledge, no other property was damaged by the November 2022 Landslide.

### Other properties the subject of emergency orders

92. Several properties (in addition to the Affected Property) were the subject of emergency orders issued by the MBS immediately following the November 2022 Landslide. These properties were not damaged by the November 2022 Landslide. Those properties are:



- (a) 1/613 Point Nepean Road, McCrae;
  - (b) 2/613 Point Nepean Road, McCrae;
  - (c) 4/613 Point Nepean Road, McCrae;
  - (d) 3 Penny Lane, McCrae; and
  - (e) 14-16 View Point Road, McCrae.
93. These relevant emergency orders concerning these properties were later cancelled by Mr Essing after the Shire obtained the advice of Stantec that the occupiers of the properties may return to their properties and without restriction. This advice was received by email on 15 and 17 November 2022 [[MSC.5003.0001.0030](#)].
94. The Stantec Report also contained a risk to life assessment concerning some of these properties and, for the properties not mentioned in the Stantec Report, Mr Slade opined that they were not at risk of the November 2022 Landslide: section 5.1 of the Stantec Report.
95. The Emergency Orders and the cancellations of the Emergency Orders are contained in the table in Schedule 1.

#### **Question 22**

**For each of the Other Properties, identify:**

- 22.1 the volume and folio number in the certificate of titles; and**
- 22.2 the names of the registered owners.**

#### **Other Properties**

96. I refer to my response to Question 21 at [91] above.

#### **Other properties the subject of emergency orders**

97. In respect of the properties referred to at [92] above, I caused searches to be undertaken of the certificates of title, which identified the names of the registered owners (as at the time of the November 2022 Landslide). In the following table, I set out:
- (a) the property address;
  - (b) the volume and folio number in the certificates of title;
  - (c) the names of the registered owners (as at the time of the November 2022 Landslide);

- (d) the emergency order; and
- (e) the date emergency order was cancelled.

<b>Address</b>	<b>Volume and Folio Number</b>	<b>Registered owner(s)</b>	<b>Emergency Order (EO)</b>	<b>EO Cancelled</b>
1/613 Point Nepean Road, McCrae	Volume 10939 Folio 930	Peter Dominic Archer	15 November 2022	18 November 2022
2/613 Point Nepean Road, McCrae	Volume 10939 Folio 931	Marie-Louise Buckley	15 November 2022	18 November 2022
4/613 Point Nepean Road, McCrae	Volume 10939 Folio 934	Jennifer Stewart-Holmes	15 November 2022	18 November 2022
3 Penny Lane, McCrae	Volume 10283 Folio 265	Lindsay Ben Wells and Ann Wells	15 November 2022	18 November 2022
14-16 View Point Road, McCrae	Volume 09376 Folio 675	Patricia Anne D'Helin	15 November 2022	18 November 2022

#### **Question 23**

**Describe the steps the Shire took in response to the November 2022 Landslide. In particular, but without limiting the foregoing, identify:**

- 23.1 when and how the Shire first became aware of the November 2022 Landslide;**
- 23.2 on first becoming aware of it, how the Shire immediately respond;**
- 23.3 the agencies, authorities, entities, expert or any other persons with whom the Shire worked to respond to the November 2022 Landslide; and**
- 23.4 any other investigations undertaken or commissioned by the Shire to identify the cause(s) of the November 2022 Landslide, including the outcomes of such investigations.**

#### **Shire's response to the November 2022 Landslide**

98. I was not a first responder to the November 2022 Landslide. However, from my role at the Shire and my review of a number of the records of the Shire concerning the November 2022 Landslide, I understand the Shire's response to the landslide to be as set out below.

99. As outlined at [102] below, the Shire first became aware of the November 2022 Landslide on 15 November 2022.
100. From an emergency management perspective, in the period immediately following the November 2022 Landslide, the incident was under the control of the Victorian State Emergency Service (as the control agency).
101. The Shire immediately responded upon being notified of the November 2022 Landslide by having a number of key emergency response personnel attend. I have been shown:
- (a) an incident log of the Municipal Emergency Management Officer dated 15 November 2022 [\[MSC.5008.0001.0069\]](#);
  - (b) an after hours call log [\[MSC.5014.0001.0181\]](#);
  - (c) an initial observation report which records the initial observations of inspections undertaken by Chris Lyne, Contract Superintendent, Davin Slade, geotechnical engineer, and Mr Rotter on 15 November 2022 and then on subsequent occasions by Mr Rotter and Mr Lyne [\[MSC.5014.0001.0172\]](#); and
  - (d) an email from Brett Fletcher, Acting Team Leader Emergency Management and Internal Review, sent at 6.49 pm on 15 November 2022 [\[MSC.5008.0001.0024\]](#)
102. These documents record that:
- (a) the Shire received a call at 6.41 am on 15 November 2022 from the owner/occupier of 3 Penny Lane, McCrae that there was a massive landslide and it was starting to impact residential properties. It is also recorded that the Shire was told that there was also a whole heap of water coming from an unknown source which could not be confirmed due to safety issues and that the police and SES had been contacted but they had not yet had a response;
  - (b) at 7:06am, the Manager Infrastructure Projects, Derek Rotter, received a telephone call from the Municipal Emergency Management Officer (**MEMO**) who informed him that the Shire had been notified of the November 2022 Landslide. Mr Fletcher records in his email that Mr Rotter attended Site at 7.10 am. Mr Rotter was the first member of the Shire to attend;
  - (c) at 7:30am, the Resilience and Recovery Coordinator (also known as the Municipal Recovery Manager), Andrew Joseph, was updated in relation to the November 2022 Landslide. I am informed that Mr Joseph attended site;
  - (d) by 9:05am, the Acting Team Leader Emergency Management Officer, Mr Fletcher, was on Site; and



- (e) at 1.30 pm, Mr Slade conducted an inspection with Mr Lyne and Mr Rotter
103. The Shire had delegates of the Municipal Building Surveyor also attend the Site. I have been shown a number of Inspection Records of Ben Essing [[MSC.5007.0003.1240](#), [MSC.5007.0003.0348](#), [MSC.5007.0003.1517](#), [MSC.5007.0003.0447](#)] which record that:
- (a) at approximately 9:30am on 15 November 2022, Building Surveyors, Ashley Hansen and Ben Essing, attended the Site;
  - (b) on arriving at Site, the Building Surveyors met with Victoria Police and the Victorian State Emergency Service;
  - (c) the Building Surveyor(s) subsequently undertook inspections of the buildings and land in the immediate area to determine the safety of those buildings and land; and
  - (d) following their inspections, the Building Surveyors issued emergency orders to the owner(s) or occupier(s) ordering that they vacate.
104. I understand emergency orders were issued by the Building Surveyors to the owner(s) or occupier(s) the following properties:
- (a) each Affected Property;
  - (b) 14-16 View Point Road;
  - (c) 3 Penny Lane;
  - (d) 1/613 Point Nepean Road;
  - (e) 2/613 Point Nepean Road; and
  - (f) 4/613 Point Nepean Road.
105. The Shire engaged a geotechnical engineer, Stantec, to attend the Site to inspect the landslide and make recommendations regarding the suitability of the emergency orders that had been issued. I have been shown the Stantec Report [[MSC.5000.0001.0292](#)] which records that Mr Davin Slade of Stantec attended the Site in the afternoon of 15 November 2022 and he carried out his inspection.
106. The Shire further corresponded with Stantec about whether any emergency orders could be lifted [[MSC.5005.0003.0549](#)].
107. I understand that, at approximately 6:00pm on 15 November 2022, 'Transition to Recovery' occurred in accordance with both the State Emergency Management Plan (**SEMP**) and the Mornington Peninsula Municipal Emergency Management Plan (**MEMP**).

108. On 16 November 2022, the Resilience and Recovery Coordinator, Andrew Joseph, met with the residents affected by the November 2022 Landslide at the Site to discuss the incident and provided support to those impacted by the incident. That meeting is referred to in an email from Mr Rotter to the Executive Team at the Shire at 9.41 pm on 16 November 2022

[\[MSC.5005.0003.0120\]](#)

109. I understand that the Shire undertook visual inspections monitoring of the November 2022 Landslide. Initially the visual inspections were undertaken by Mr Line and Mr Rotter with Mr Slade and subsequently by a contractor from early December 2022 to March 2023 overseen by the Municipal Building Surveyor.

110. Further, determinations were made by the Building Surveyor in relation to emergency orders that could be cancelled, building notices and building orders for works required to make the area safe. I refer to my response to Question 25.

111. In the time available, it is not possible to provide a complete account of every step the Shire took to respond to the November 2022 Landslide. However, it is my understanding (based on the information available to me) that the Shire worked with the following agencies and persons to respond to the November 2022 Landslide:

- (a) the Victorian State Emergency Service;
- (b) Victoria Police;
- (c) geotechnical engineer, Davin Slade of Stantec;
- (d) the residents; and
- (e) Public Transport Victoria.

112. In the time available, I have identified these entities to the best of my knowledge.

**Investigations undertaken or commissioned by the Shire into the November 2022 Landslide**

113. While I was not directly involved in the commissioning of any investigations into the November 2022 Landslide, I understand that the Shire did commission the following investigations into the November 2022 Landslide:

- (a) the Stantec Report [\[MSC.5000.0001.0292\]](#);
- (b) technical memorandum of Davin Slade of Stantec (Ref No. V220600Report02.1) dated 23 June 2023 [\[MSC.5000.0001.0974\]](#);
- (c) risk assessment of Dane Pope of PSM dated 3 November 2023 [\[MSC.5000.0001.1206\]](#);



- (d) PSM Liability Report [\[MSC.5000.0001.0639\]](#);
- (e) expert report of Dane Pope of PSM on the risk to life (Ref. PSM5226-002L Rev1) dated 11 June 2024 (**PSM Risk to Life Report**) [\[MSC.5000.0001.1706\]](#); and
- (f) expert report of Dane Pope of PSM on rectification options (Ref. PSM5226-005R) dated 11 June 2024 (**PSM Rectification Report**) [\[MSC.5000.0001.1980\]](#).

#### Question 24

**Describe the cause(s) of the November 2022 Landslide. Exhibit any documents recording the analysis of the cause(s) (e.g. expert technical reports of investigations into the November 2022 Landslide).**

- 114. The Shire obtained an opinion from PSM on the cause(s) of the November 2022 Landslide. This opinion is detailed in the PSM Liability Report [\[MSC.5000.0001.0639\]](#).
- 115. It is Mr Pope of PSM's opinion (see section 8.1.1) that:
  - (a) there is no singular cause of the November 2022 Landslide. A combination of natural and anthropogenic factors or controls contributed to the November 2022 Landslide;
  - (b) the translational landslide occurred primarily as the result of natural geomorphological processes in combination with the 'Rain Event';
    - (i) the geomorphological processes include, for example, the slope angle and saturation of the Surficial Sands and Colluvium;
    - (ii) the 'Rain Event' is the high antecedent rainfall that occurred to 9am on 14 November 2022. It is Mr Pope's opinion that the Rain Event had a 1 in 100 years to 1 in 200 years probability of occurring; and
  - (c) the debris flow landslide was a conditional event, dependant on the initial translational landslide occurring. The debris flow landslide was caused primarily by a large amount of water from a damaged irrigation system at 10-12 View Point Road, in combination with natural geomorphological process and the Rain Event.
- 116. Mr Pope also identified a number of secondary contributors that in his opinion are likely to have made minor to moderate contributions to the November 2022 Landslide but are unlikely to have caused the November 2022 Landslide. The secondary contributors include:
  - (a) natural ground water seepage;
  - (b) landscaping features that direct or concentrate water into the landslide area; and

(c) loss of vegetation on the slope.

117. I note that my answer to question 24 is based upon the opinions of Mr Pope of PSM, who was engaged by the Shire. I have not addressed expert reports relevant to the cause of the November 2022 Landslide that were commissioned by others, for example by the owners of 10-12 View Point Road.

#### **Question 25**

**Describe any determinations made by the Municipal Building Surveyor in respect of the November 2022 Landslide and exhibit any documents recording his or her deliberations in respect of same.**

118. As a result of the November 2022 Landslide, Building Surveyors (under the delegation of the Municipal Building Surveyor) issued numerous emergency orders, cancellations of emergency orders, building notices and building orders concerning the Affected Properties and other properties. I am not a building surveyor, however, it is my understanding that all of these documents were issued by the Building Surveyors pursuant to their delegated powers under the *Building Act 1993* (Vic).
119. At Schedule 1 is a list of the emergency orders, cancellations of emergency orders, building notices and buildings orders issued by the Relevant Building Surveyors, under the delegation of the Municipal Building Surveyor, in response to the November 2022 Landslide. The list contains a description of each order.

#### **Question 26**

**Describe any changes made to the Shire's practices or procedures, as a result of the November 2022 Landslide, to prevent and mitigate landslides and landslips in the McCrae Area.**

120. I am not aware of any changes made to the Shire's practices or procedures as a result of the November 2022 Landslide to directly prevent and mitigate landslide and landslips in the McCrae Area. It is to be noted that the Shire's ability to take such action arises principally in the context of its statutory functions in planning control, emergency management planning and response, building surveying, and infrastructure maintenance. I refer to Mr Oz's response to question 1.
121. It is my understanding that, following the November 2022 Landslide, different sections of the Shire may have taken steps to document its existing practices or procedures for responding to landslides and landslips.



122. A number of key personnel within the office of the municipal building surveying section of the Shire are currently on leave (including Mr Flores and Mrs Glover) or no longer with the Shire (Mr Essing and Mr Hansen), and I have not been able to confirm with them whether they have made any changes to their practices.
123. I understand that the Shire and its legal representatives will continue to investigate these matters so that all relevant information can be provided to the Board of Inquiry as soon as possible.

#### **Question 27**

**In the period between the November 2022 Landslide and the McCrae Landslide, did the Shire experience any challenges to implementing measures to prevent or mitigate landslides and landslips in the McCrae Area?**

124. Since the November 2022 Landslide, the Shire has utilised its resources and statutory powers to respond to the incident. This has included the issuing of emergency orders, building notices and building orders. However, significant challenges have arisen in having the building works the subject of the building orders carried out.
125. Delegates of the Municipal Building Surveyor have issued various orders for certain building work to be undertaken to prevent or mitigate landslides or landslips on the land affected by the November 2022 Landslide. I have been shown copies of the relevant building orders, which record that:
- (a) On 4 April 2024, the Municipal Building Surveyor, Mr Claudio Flores, served a Building Order on the owners of 10-12 View Point Road, Mr and Mrs Borghesi (No. BO-004/24): [\[MSC.5002.0001.1567\]](#). The building order required the owners to carry out stabilisation work to the landslip-affected land in accordance with the geotechnical recommendations and structurally engineered design after obtaining the relevant building and planning permit approvals. The owners were ordered to carry out the building work by 5.00pm on 3 June 2024.
  - (b) On 4 April 2024, the Municipal Building Surveyor, Mr Claudio Flores, served a further Building Order on the owners of 10-12 View Point Road, Mr and Mrs Borghesi (No. BO-005/24): [\[MSC.5002.0001.1572\]](#). The building order required the owners to remove all the landslip debris from Penny Lane in accordance with geotechnical recommendations after obtaining the Shire's permits and approvals. The owners were ordered to carry out the building work by 5.00pm on 3 June 2024.
126. It is my understanding that the stabilisation work is to prevent or mitigate a further landslide or landslip in the area the subject of the November 2022 Landslide.

127. I am informed that neither the stabilisation work nor the debris removal works has been carried out by the owners of 10-12 View Point Road. It is my understanding that the owners of 10-12 View Point Road commenced proceedings in the Building Appeals Board, in which they appealed the building orders requiring them to undertake these works. It is my understanding that, as a result of those proceedings, the Shire is not able to take further steps at the present time to enforce the relevant building orders.
128. The Shire has engaged geotechnical experts (and other experts) to investigate and report on issues of causation, rectification and liability concerning the November 2022 Landslide. It is my understanding that the investigations undertaken by experts have been complex and time-consuming, resulting in significant challenges to Council in that it has been limited in its ability to relay information to affected residents.

Personal Information

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**Signed** by David Simon

on 11 April 2025

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130.	<a href="#">MSC.5007.0003.0141</a>	18 November 2022	
131.	<a href="#">MSC.5007.0003.0515</a>	18 November 2022	
132.	<a href="#">MSC.5007.0003.1380</a>	18 November 2022	
133.	<a href="#">MSC.5007.0003.0836</a>	18 November 2022	
134.	<a href="#">MSC.5007.0003.0826</a>	18 November 2022	
135.	<a href="#">MSC.5007.0003.0646</a>	18 November 2022	
136.	<a href="#">MSC.5007.0003.0804</a>	28 November 2022	
137.	<a href="#">MSC.5007.0003.0564</a>	28 March 2023	
138.	<a href="#">MSC.5007.0003.0078</a>	30 March 2023	



No	Description	Date	Pages
139.	<a href="#">MSC.5002.0001.1607</a>	18 May 2023	
140.	<a href="#">MSC.5002.0001.0883</a>	6 February 2024	
141.	<a href="#">MSC.5002.0001.7572</a>	6 February 2024	
142.	<a href="#">MSC.5002.0001.1572</a>	7 February 2024	
143.	<a href="#">MSC.5002.0001.1555</a> <a href="#">MSC.5002.0001.0898</a>	7 February 2024	
144.	<a href="#">MSC.5002.0001.0893</a>	7 February 2024	
145.	<a href="#">MSC.5005.0027.0228</a>	24 February 2024	
146.	<a href="#">MSC.5002.0001.7583</a>	14 March 2024	
147.	<a href="#">MSC.5002.0001.1567</a>	4 April 2024	
148.	<a href="#">MSC.5002.0001.1572</a>	4 April 2024	
<b>Question 27</b>			
149.	<a href="#">MSC.5002.0001.1567</a>	04 April 2024	
150.	<a href="#">MSC.5002.0001.1572</a>	04 April 2024	



### Schedule 1

A list of the emergency orders, cancellations of emergency orders, building notices and buildings orders issued by the Relevant Building Surveyors, under the delegation of the MBS, in response to the November 2022 Landslide

Date	BO/EO Number	Property	Description of the order	BATE Number
15/11/2022	EO-151/22	2 Penny Lane MCCRAE	Emergency order prohibiting the occupation of the dwelling and any associated buildings on the land and requiring the owner/occupier of the land slip impacted building to provide evidence of soil stabilisation to the land to the satisfaction of the MBS	<a href="#">MSC.5007.0003.0815</a>
15/11/2022	EO-149/22	3 Penny Lane MCCRAE	Emergency order prohibiting the occupation of the dwelling and any associated buildings on the land and requiring the owner/occupier of the land slip impacted building to provide evidence of soil stabilisation to the land to the satisfaction of the MBS	<a href="#">MSC.5007.0003.0743</a>
15/11/2022	EO-145/22	1/613 Point Nepean Road MCCRAE	Emergency order prohibiting the occupation of the dwelling and any associated buildings on the land and requiring the owner/occupier of the land slip impacted building to provide evidence of soil stabilisation to the land to the satisfaction of the MBS	<a href="#">MSC.5007.0003.1393</a>
15/11/2022	EO-146/22	2/613 Point Nepean Road MCCRAE	Emergency order prohibiting the occupation of the dwelling and any associated buildings on the land and requiring the owner/occupier of the land slip impacted building to provide evidence of soil stabilisation to the land to the satisfaction of the MBS	<a href="#">MSC.5007.0003.1233</a>
15/11/2022	EO-147/22	3/613 Point Nepean Road MCCRAE	Emergency order prohibiting the occupation of the dwelling and any associated buildings on the land and requiring the owner/occupier of the land slip impacted building to provide evidence of soil stabilisation to the land to the satisfaction of the MBS	<a href="#">MSC.5007.0003.0088</a> <a href="#">MSC.5007.0003.0767</a> (duplicate)
15/11/2022	EO-148/22	4/613 Point Nepean Road MCCRAE	Emergency order prohibiting the occupation of the dwelling and any associated buildings on the land and requiring the owner/occupier of the land slip impacted building to provide evidence of soil stabilisation to the land to the satisfaction of the MBS	<a href="#">MSC.5007.0003.1015</a>

Date	BO/EO Number	Property	Description of the order	BATE Number
15/11/2022	EO-150/22	14-16 View Point Road MCCRAE	Emergency order prohibiting the occupation of the dwelling and any associated buildings on the land and requiring the owner/occupier of the land slip impacted building to provide evidence of soil stabilisation to the land to the satisfaction of the MBS	<u>MSC.5007.0003.0466</u>
15/11/2022	EO-144/22	10-12 View Point Road MCCRAE	Emergency order prohibiting the occupation of the dwelling and any associated buildings on the land and requiring the owner/occupier of the land slip impacted building to provide evidence of soil stabilisation to the land to the satisfaction of the MBS	<u>MSC.5007.0003.0396</u>
18/11/2022	EO-152/22	10-12 View Point Road MCCRAE	Emergency order that at 5 pm on 18 November 2022, entry and use of the land that is within 3m of the embankment and beyond (refer to Appendix A) is prohibited until the land is deemed safe by the MBS pursuant to Section 103(2) of the Building Act 1993	<u>MSC.5007.0003.0858</u>
18/11/2022	EO-149/22	3 Penny Lane MCCRAE	Cancellation of emergency order 149/22	<u>MSC.5007.0003.0141</u>
18/11/2022	EO-144/22	10-12 View Point Road MCCRAE	Cancellation of emergency order 15/11/22	<u>MSC.5007.0003.0515</u>
18/11/2022	EO-145/22	1/613 Point Nepean Road MCCRAE	Cancellation of emergency order 145/22	<u>MSC.5007.0003.1380</u>
18/11/2022	EO-146/22	2/613 Point Nepean Road MCCRAE	Cancellation of emergency order 146/22	<u>MSC.5007.0003.0836</u>
18/11/2022	EO-148/22	4/613 Point Nepean Road MCCRAE	Cancellation of emergency order 148/22	<u>MSC.5007.0003.0826</u>
18/11/2022	EO-150/22	14-16 View Point Road MCCRAE	Cancellation of emergency order 150/22	<u>MSC.5007.0003.0646</u>
28/11/2022	EO-153/22	10-12 View Point Road MCCRAE	Emergency order requiring the owner to carry out various building and other work as identified in the emergency order	<u>MSC.5007.0003.0804</u>



Date	BO/EO Number	Property	Description of the order	BATE Number
28/03/2023	MW-127/23	10-12 View Point Road MCCRAE	Building order requiring building work in relation to the land slip affected land as outlined in the building order	<a href="#">MSC.5007.0003.0564</a>
30/03/2023	EO-153/22	10-12 View Point Road MCCRAE	Cancellation of emergency order 153/22	<a href="#">MSC.5007.0003.0078</a>
18/05/2023	EO-134/23	10-12 View Point Road MCCRAE	Emergency order requiring the owners to carry out building work as outlined in the emergency order	<a href="#">MSC.5002.0001.1607</a>
06/02/2024	EO-003/24	3/613 Point Nepean Road MCCRAE	Vacate Order requiring the owner to evacuate the land and prohibit anyone occupying the land unless permitted by the MBS	<a href="#">MSC.5002.0001.0883</a>
06/02/2024	BN-005/24	3/613 Point Nepean Road MCCRAE	Building notice requiring the owners to show cause within 30 days of the notice why entry, use, or occupation of the building/land should not be prohibited until such time the adjoining landslip affected land has been made to the satisfaction of the MBS	<a href="#">MSC.5002.0001.7572</a>
07/02/2024	BN-006/24	2 Penny Lane MCCRAE	Building notice requiring the owners to show cause within 30 days of the notice why entry, use, or occupation of the building/land should not be prohibited until such time the adjoining landslip affected land has been made to the satisfaction of the MBS	<a href="#">MSC.5002.0001.1572</a>
07/02/2024	BN-001/24	10-12 View Point Road MCCRAE	Building notice requiring owner to undertake stabilisation work to the landslip affected land in accordance with geotechnical recommendations and a structurally engineered design	<a href="#">MSC.5002.0001.1555</a> <a href="#">MSC.5002.0001.0898</a>
07/02/2024	BN-002/24	10-12 View Point Road MCCRAE	Building notice requiring owner to remove all the landslip debris from Penny Lane	<a href="#">MSC.5002.0001.0893</a>
24/02/2024	EO-004/24	2 Penny Lane MCCRAE	Emergency order prohibiting occupation of the dwelling. Emergency order is to be read in conjunction with BN-006/24 and replaces EO-151/22	<a href="#">MSC.5005.0027.0228</a>
14/03/2024	BN-001/24	3/613 Point Nepean Road MCCRAE	Building order prohibiting occupation and use of the dwelling until such time as the adjoining landslip affected land (10-12 View Point Road, McCrae) has been made safe to the satisfaction of the MBS	<a href="#">MSC.5002.0001.7583</a>



Date	BO/EO Number	Property	Description of the order	BATE Number
04/04/2024	BO-004/24	10-12 View Point Road MCCRAE	Building order requiring the owner to carry out stabilisation work to the landslip affected land in accordance with geotechnical recommendations and a structurally engineered design	<a href="#">MSC.5002.0001.1567</a>
04/04/2024	BO-005/24	10-12 View Point Road MCCRAE	Building order requiring the owner to remove all the landslip debris from Penny Lane	<a href="#">MSC.5002.0001.1572</a>