BOARD OF INQUIRY INTO THE McCRAE LANDSLIDE

Katanya Barlow

Witness Statement

Prepared for the purpose of a Board of Inquiry

6 June 2025

FIFTH WITNESS STATEMENT OF KATANYA BARLOW

Name: **Katanya Barlow**

Address: 2 Queen Street, Mornington, Victoria, 3931

Occupation: Manager – Strategic & Infrastructure Planning

Date: 6 June 2025

1. I make this witness statement in response to the Request to Produce a Witness Statement dated 27 May 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 Shire that I have reviewed. I have also used and relied upon data and information produced or provided to me by officers within the Shire.

3. I provide a response in relation to Questions 3 and 4 of the Notice.

Question 3

At paragraphs 38 to 39 of Mr Bulent Oz's statement dated 11 April 2025, he gives evidence that:

38. Fourth, there are other state-wide provisions, including (relevantly) clause 13.02 which deals with bushfires. Clause 13.02-1S (Bushfire Planning) provides, as a strategy, to prioritise the protection of human life over all other policy considerations. Inter-related is clause 52.12, entitled Bushfire Protection Exemptions. Clause 52.12 then sets out five types of instances where the removal of vegetation for either existing buildings or works, or proposed buildings or works override any other provision in a planning scheme, existing planning permit or proposed permit, even if they were included to prevent erosion and landslip under a control such as the EMO or ESO.

39. This has been a long-standing issue, which the Shire (as well as other local councils) has raised with the State Government. This is because land in areas prone to bushfire or within the BMOs are often vegetated and that vegetation plays a key role in preventing and mitigating the effects of erosion, landslip and landslide. The areas

prone to bushfire or the BMO often coincide with steep land or areas prone to erosion. (emphasis added)

(a) Describe all instances where the Shire has expressed concerns to the State Government or other relevant bodies regarding Victoria's planning system so far as it concerns the management of erosion, landslip or landslide risks. In particular, identify:

i. when and how such concerns were raised by the Shire;

ii. the relevant addressee from the State Government; and

iii. how the State Government responded to the matter.

(b) Exhibit key documents recording the correspondence (if any) between the Shire and the State Government.

4. In my opinion, having read the two paragraphs excerpted from Mr Oz's statement in Question 3, those paragraphs concern clause 13.02 and cl 52.12 (**Bushfire Protection Exemptions**) of the MPPS (i.e., **Bushfire planning controls**). They are not paragraphs about raising concerns with the State Government about "erosion, landslip or landslide risks" as appears to be the focus of Question 3(a). However, for completeness, in this response, I set out the concerns the Shire has raised with the State of Victoria about the Bushfire planning controls, and, separately, the concerns the Shire has raised with the State of Victoria about erosion, landslip and landslide risks.

5. In relation to Bushfire planning controls, in preparing this witness statement, I have been shown the Minutes of a Council meeting on 14 May 2019, a copy of which is at **[MSC.5057.0001.0001]**. Those minutes record (at pp. 17-19) that the Council considered the item "3.2 Living Melbourne – Our Metropolitan Urban Forest", and as part of that item resolved, in part, that "a paper be brought to Council reviewing any right to remove vegetation throughout the Shire under the 10/30 and 10/50 right, including redevelopment of land to require canopy tree planting, incorporating acknowledgement of the Localised Planning Statement and establish an advocacy position for Council to adopt." I have been shown the Council Meeting Attachment Book for 14 May 2019, and I believe that the relevant attachment is Attachment 1 for "3.2 Living Melbourne – Our Metropolitan Urban Forest", a copy of which is at **[MSC.5057.0001.0036]**. I note this document identifies that the strategy established has three goals, one of which is "Natural Infrastructure: Protect and increase vegetation on public and private land, in order to cool urban areas, retain water in the soils, reduce flood risk and increase water and air quality" (see at page 46). Then,

under the heading "Natural Infrastructure", the document provides: "Metropolitan Melbourne's urban forest provides important ecosystem services that are vital to supporting human life, health and wellbeing in our city. The urban forest [...] protects our coast from flooding and erosion [...]." (at page 48).

6. I have been shown Minutes of the Council's Planning Services Committee Meeting on 16 March 2020 copy of which is at [**MSC.5057.0001.0123**]. The relevant background and resolution is at **MSC.5057.0001.0123**, pp. 5-9. Those Minutes show that on 16 March 2020, the Planning Services Committee resolved, in summary, to advocate for certain changes to the Bushfire planning controls, including: to remove the '10/30 rule' (cl 52.12-1) and the fence line vegetation exemptions (cl 52.12-2) from identified low to no-risk areas on the Mornington Peninsula, and to advocate to introduce a provision to cl 52.12 that enables a responsible authority to consider vegetation recently removed under the exemptions where the land is subsequently proposed to be developed. In preparing this witness statement I have also been show a Planning Services Committee Meeting Attachment Book for 16 March 2020. I believe that the relevant attachments to that document are Attachments 1 – 5 of item "2.1 Bushfire Protection Planning Provisions Review", copies of which are at [**MSC.5057.0001.0456**]

7. Based on my review of Shire records, I believe that following that original resolution, Shire officers met on a monthly basis with officers from several other councils (including Frankston, Whittlesea, Manningham and Casey) and representatives of the Municipal Association of Victoria (**MAV**) and the Country Fire Authority (**CFA**) to explore advocacy options to refine bushfire exemption provisions as part of a 'Living Melbourne' project led by Frankston City Council.

8. In preparing this witness statement I have been shown a letter dated 18 May 2020 to the then Minister for Planning from then Shire Mayor Cr. Hearn. By that letter Cr. Hearn sought the Minister's support for a partnership between the State and local government to review bushfire protection provisions within the Victorian Planning Provisions (**VPPs**). I note in particular that Cr. Hearn noted the "Council believes that the current provisions could be improved to enhance the State's bushfire resilience whilst minimising unnecessary vegetation loss." A Taskforce was proposed, and the letter made several recommendations about reforms, including to cl 52.12. The letter is further referred to below.

9. In preparing this witness statement I have been shown a letter dated 25 June 2020 from the then Minister for Planning to Cr. Hearn. By that letter, the then Minister noted the Shire's interest in enhancing bushfire resilience while minimising unnecessary vegetation loss, the Shire's and other local council interest in reviewing cl 52.12, and three bushfire inquires then underway. The then Minister identified that given those inquiries, it would be

premature to start undertaking the review process before those reports were released. The letter is further referred to below.

10. In preparing this witness statement I have reviewed a document which I believe is the Shire's submission to the Victorian Government's Bushfire Planning Made Clearer **Review**, made by the Shire in about March 2022. I have reviewed the Victorian Government's "engage" website and believe the relevant webpage setting out the details of this Review is <https://engage.vic.gov.au/bushfire-planning-made-clearer-options-victorias-planning-system>. The Shire's submission is further referred to below.

11. In preparing this witness statement I have been shown an email dated 10 February 2023 from Christian Lynch of the Shire to the (then) Department of Environment, Land, Water and Planning, titled "Mornington Peninsula Shire Council – Comments for draft Bushfire Planning Provisions." To that email was attached a document containing the Shire's feedback. A copy of that 10 February 2023 email, and its attachment, is at [**MSC.5057.0001.0452**].

12. On 19 December 2023, the Council decided to advocate to the Victorian Minister for Planning to work with the Shire to explore possible improvements to existing Bushfire planning controls, using the Mornington Peninsula Shire as a pilot test case. In this respect:

13. In the course of preparing this witness statement I have been shown a copy of the Council Meeting **Agenda** for 19 December 2023, a copy of which is at [**MSC.5057.0001.0186**]. I have reviewed that Agenda and believe that the relevant agenda item is 4.5 "Update to Planning Scheme Bushfire Exemptions Mapping Review". I note, separately, that the Agenda at p 56-57 sets out the Council's requests to review the bushfire prone area mapping for the entire southern region of the Shire (but which did not include McCrae), and the outcome of that mapping process.

14. In the course of preparing this witness statement I have been shown a copy the Council Meeting **Attachment Book** for 19 December 2023. I have identified that the relevant attachments of the Attachment Book are Attachments 1 – 7 under item 4.5 "Update to Planning Scheme Bushfire Exemptions Mapping Review" contained at pp 593 – 668 of the Attachment Book (the **Relevant Attachments**). Copies of the Relevant Attachments are at [**MSC.5057.0001.0525**]. On this point, I note specifically that:

    (a) **Attachment 1** summarised the Bushfire protection exemptions, and noted the advocacy that the Shire, together with entities, had engaged in up to that point. I have relied on Attachment 1 in preparing my answer above at paragraph [7].

(b) **Attachment 3** is a copy of the letter dated 18 May 2020 from the then Mayor, Cr. Hearn, to the then Minister for Planning referred to in paragraph [8] above.

(c) **Attachment 4** is a copy of the letter dated 25 June 2020 from the then Minister for Planning to Cr .Hearn referred to in paragraph [9] above.

(d) **Attachment 5** is a copy of the Shire's submission to the Victorian Government's Bushfire Planning made clearer: Options for Victoria's Planning System Review in or about March 2022, referred to in paragraph [10] above. Further, it my understanding and belief that Attachment 5 was approved by the Planning Services Committee on 28 March 2022. A copy of the Minutes for the 28 March 2022 meeting are at [**MSC.5057.0001.0467**](see pp. 11-12).

15. In the course of preparing this witness statement I have been shown a copy of the Council Meeting **Minutes** for its meeting of 19 December 2023, a copy of which is at [**MSC.5057.0001.0604**]. Item 4.5 of the Minutes records the decision taken of the Council as referred to above.

16. In the course of preparing this witness statement I have been shown a copy of a letter dated 28 March 2024 to the Minister for Planning from then Mayor, Cr. Simon Brooks. I am listed as the contact person for the Shire in that letter. The letter asked the Minister to create a taskforce to consider changes to cl 52.12 of the MPPS that would stop landowners from clearing vegetation from their property using the '10/30 rule' in areas of the Peninsula that have low- to no bushfire risk or simply to gain a development advantage. In the letter, I note the Shire stated: "We believe the current provisions that allow as-of-right vegetation removal could be improved to enhance bushfire resilience while minimising unnecessary vegetation loss to protect Victoria's highly valued biodiversity and natural ecosystems." In response to the previous Minister's letter, which raised the then extant bushfire inquiries, the Shire noted: "These inquiries have since been completed and not resulted in any changes to the VPPs." In the letter, the Shire specifically requested exploring changes to cl 52.12, including the removal of the '10/30 rule (what is cl 52.12-1) and fence line vegetation exemptions (what is cl 52.12-2) from areas "identified as having low- to no bushfire risk" and "introducing a provision to Clause 51.12 that enables the responsible authority to consider vegetation recently removed under the exemptions where the land is subsequently proposed to be developed to prevent the possible misuse of exemptions to gain a development advantage." A copy of the letter is at [**MSC.5057.0001.0640**].

17. Subsequently, on 23 May 2025, the Shire received an email from an officer of the Department of Transport and Planning which stated: "**Bushfire Planning discussion paper -10/30 rule**[.] Our Environment Planning and Emergency Recovery team advise that

at this point in time there is no intention to review the bushfire exemptions." A copy of that email is at [**MSC.5057.0001.0643**].

18. To the extent Question 3 is directed to concerns the Shire has raised with the State of Victoria about erosion, landslip and landslide risks, in preparing this witness statement I have been shown a copy of a letter dated 28 September 2001 from the Shire to the then Minister for Local Government. A copy is at [**MSC.5016.0001.0932**]. In particular, that letter requested that the then Minister examine and consider how relevant legislation might be amended to create a power by which local municipalities might intervene to require landowners to stabilise their land. The letter gave an example of erosion on certain land in Rye, whereby "adjoining owners are now concerned that the stability of their land may be threatened or that the eroding material will spill over common boundaries." I understand that the solicitors for the Shire provided a copy of this letter to the Board of Inquiry on or about 1 May 2025.

19. In preparing this witness statement I have been shown a copy of a letter dated 15 November 2001 from Peter Anderson, Acting Regional Manager, Department of Infrastructure, replying to the 28 September 2001 letter. A copy is at [**MSC.5012.0001.4136**]. It stated, relevantly: "The Government is looking at a range of measures and options in relation to landslip and it is therefore premature to respond to your Council's specific proposal at this stage." I understand that the solicitors for the Shire provided a copy of this letter to the Board of Inquiry on or about 1 May 2025.

20. I understand that the Shire has conducted searches which have not identified any further correspondence that may clarify the context of these 2001 letters, or any further response from the then Minister, or any relevant State Government Department or representative. I am not aware of any further legislative reform that was effected to address the matters raised in the 28 September 2001 letter.

21. While I do not understand the focus of Question 3 to be concerns raised with the State Government about coastal erosion, for completeness I note that on 22 August 2023 the Shire sent a letter to the Minister for Planning concerning coastal hazard controls. A copy of that letter is at[**MSC.5057.0001.0765**]. This was sent in accordance with a Council resolution on 11 July 2023. In the course of preparing this witness statement I have been shown the Agenda for the 11 July 2023 Council meeting, a copy of which is at [**MSC.5057.0001.0645**]. I note that item 5.1 (pp. 70-71) sets out the motion relevant to the aforementioned letter. In the course of preparing this witness statement I have been shown the Minutes of the 11 July 2023 Council meeting, a copy of which is at [**MSC.5057.0001.0727**]. I note that item 5.1 (p. 28) sets out the resolution relevant to the aforementioned letter.

22. In preparing this witness statement I have been shown a document titled "Reforming Victoria's Planning System: Local Government Sector Submission, April 2025, Municipal Association of Victoria" (the **MAV April 2025 Submission**). A copy is at [**MSC.5057.0001.0275**]It is my understanding and belief that the Council endorsed the MAV April 2025 Submission at its meeting on 6 May 2025. It is my understanding and belief, having reviewed the MAV's website < https://www.mav.asn.au/what-we-do/policy-advocacy/planning-building> that the MAV released the MAV April 2025 Submission in April 2025, but I do not know whether MAV specifically provided it to the Victorian Government, and if so, to whom.

23. The MAV April 2025 Submission is in response to the Victoria's Government's review of the *Planning and Environment Act 1987* (Vic) (**P&E Act**). Notably, the MAV April 2025 Submission (which reflects the Shire's position) at recommendation 10 stated:

> That the Government apply a new method for introducing and updating flood- and erosion-related land management overlays in planning schemes. The method should provide for:
>
> 1. One amendment, exhibition, panel and adoption per strategic exercise (e.g. per catchment or per coastal region);
> 2. The relevant Minister or delegate being the planning authority;
> 3. The amendment being considered by a specialist standing panel; and
> 4. Affected councils, being the primary administrators of municipal planning schemes, being guaranteed significant opportunities to make submissions.

24. I note that the MAV April 2025 Submission set out the background for recommendation 10 at item 9.3 Natural Hazards (see pp. 50 – 52).

25.

Not relied upon

26.

27.

Not relied upon

28

Not relied upon

29.

30. I have referred to the 9 May 2025 Council meeting in my above answers. For completeness, I have been shown a copy of the Minutes of the 9 May 2025 Council meeting, a copy of which is at [MSC.5057.0001.0402] . I have reviewed those Minutes and note the relevant approval of the MAV April 2025 Submission and the VPP Amendments Submission is at item 4.7, p 30. I have also been shown a copy of the Agenda for the 9 May 2025 Council

meeting, a copy of which is at [MSC.5057.0001.0370]. The relevant background to the approval of the MAV April 2025 Submission and the VPP Amendments Submission is at item 4.7, pp 38 – 39.

31. Finally, in the course of preparing this witness statement I have reviewed an email I sent to representatives of the Department of Transport and Planning on 7 April 2025 concerning VC267. Notably, in that email, I raised a number of concerns similar to those raised by the Shire in the VPP Amendments Submission about VC267. A copy of that email is at [MSC.5057.0001.0450].

32. Other than the correspondence referred to above, I am not aware of any further correspondence in relation to the Bushfire Protection Exemptions, or in relation to erosion, landslide or landslip risk which expresses concerns to the State Government of the kind enquired of by Question 3. I understand that the Shire and its solicitors have conducted searches and have not, to date, uncovered any other documents relevant to Question 3.

Question 4:

Provide a detailed explanation of the process the Shire would need to follow to:

(a) introduce interim Erosion Management Overlay (EMO) schedules for all high susceptibility landslide areas within the Shire; and

(b) obtain a planning scheme amendment to update the existing EMO schedules to apply the EMO to land not currently captured by the current EMO schedules.

In particular, identify:

(c) the anticipated timeframes for each step in the process; and

(d) any difficulties or barriers to the implementation of these measures.

33. The following answer is given on the basis of my own professional experience, and on the advice of David Simon, with whom I have conferred in preparing this answer. I have also been assisted by the Shire's external legal team in relation to the legislative basis for some of the processes detailed below.

Background

34. The answers to Question 4(a) and Question 4(b) are the same: there are two alternative pathways that the Shire can elect to follow. I set out those two pathways below. That is, the *Planning and Environment Act 1987* (**P&E Act**) does not discriminate between whether or not a planning scheme amendment is one that will apply on an "interim" basis, or a

"permanent" basis. There is simply an amendment to the planning scheme, which can be achieved by following two alternative pathways under the P&E Act.

35. In answer to Question 4(a), it is my understanding that the Shire will more likely than not seek to pursue any **interim EMO amendment** under the second pathway (which I detail below). That is because the second pathway can potentially deliver an interim EMO amendment to the MPPS in a more timely way than the first pathway, which is the standard pathway (generally) for amendments to a planning scheme under the P&E Act.

36. In answer to Question 4(b), it is my understanding that the Shire will more likely than not seek to pursue any **permanent EMO amendment** under the first pathway, albeit that is not yet a decision the Shire has taken. In my professional experience the Shire usually follows the first pathway (i.e., the standard pathway) for any substantial/permanent amendments to the MPPS.

37. I deal with Question 4(a) and Question 4(b) below. In so doing, I also answer Question 4(c) and 4(d).

Question 4(a): the process the Shire would need to follow to introduce interim Erosion Management Overlay (EMO) schedules for all high susceptibility landslide areas within the Shire (i.e., an interim EMO amendment).

38. The planning scheme amendment process is a legal process that follows the rules substantially set out at Part 2 and Part 3 of the P&E Act and Part 2 of the *Planning and Environment Regulations 2015* (Vic) (**P&E Regulations**). The Victorian Government also sets out information relevant to understanding this process at the following link: https://www.planning.vic.gov.au/guides-and-resources/guides/guide-to-victorias-planning-system/amendments

39. The planning authority undertakes planning scheme amendments. Generally, the planning authority is a local council (i.e., the Shire) or the Minister for Planning (although the Minister for Planning can authorise other Ministers or public authorities to undertake the process).

40. The **first pathway** the Shire can elect to follow for an interim EMO amendment (and/or permanent EMO amendment, for that matter) is the standard process for all planning scheme amendments under the P&E Act, with the *Shire* as the *planning authority*.

41. In preparing this witness statement, I have been shown a copy of **Ministerial Direction No. 15** "The Planning Scheme Amendment Process", a copy of which is at [MSC.5057.0001.0447]. Ministerial Direction No. 15 sets the timeframes for completing several steps in the first pathway.

42. In my personal experience, the first pathway usually takes between 18 months and 2 years, although it can take much longer, depending on how long it takes the Minister for Planning to authorise and approve the amendment, and how many (and the complexity of) submissions are received as part of the exhibition of the amendment.

43. The steps for the first pathway are, in summary, as follows:

(a) The Shire identifies the need for an amendment to the planning scheme (for example, the need for an interim EMO amendment);

(b) The Shire submits an application for authorisation to prepare the amendment to the Minister for Planning. This application needs to include the strategic justification for the amendment and all the amendment documentation (e.g. explanatory report, amendment map sheets, amendment clauses and schedules, and any other information to support the request for authorisation, such as council resolutions). In this respect, see, e.g., P&E Act, s 8A.

(c) The Minister for Planning considers the application and decides (see P&E Act, s 8A(4)):

(i) The application requires further review; or

(ii) To authorise the Shire to prepare the amendment; or

(iii) To refuse to authorise the Shire to prepare the amendment.

(d) If Shire is authorised to prepare the amendment, the Shire then finalises the amendment documentation and gives notice of the amendment and undertakes public exhibition (i.e., undertakes public consultation, during which time submissions must be capable of being made for a minimum of 1 month) (see, e.g., P&E Act, ss 17 – 20A). In this respect, Ministerial Direction No. 15 cl 4(1) requires that the Shire gives notice of an amendment within 40 business days after authorisation is granted by the Minister to prepare the amendment.

(e) The Shire must then consider all submissions received, and decide to either (see, e.g., P&E Act, ss 22–23):

(i) Change the amendment in the manner requested; or

(ii) Refer the submission/s to a planning panel; or

(iii) Abandon the amendment or part of the amendment.

(f) In this respect, if the Shire decides to refer the submission/s to a planning panel, Ministerial Direction No. 15, cl 1(3) requires that the Shire requests the appointment of a panel within 40 business days after the closing date for submissions. Alternatively, if no submissions have been referred to a panel, Ministerial Direction No 15 cl 4(6)(a) requires the planning authority to decide to abandon the amendment or adopt the amendment within 60 business days of the closing date for submissions.

(g) If the submissions are referred to a planning panel (the usual decision for most large, complex amendments), a planning panel then considers all submissions, conducts hearings and prepares a report outlining its recommendations. This report is provided to the Shire and made publicly available (see, e.g., P&E Act, ss 24–26). In this respect, Ministerial Direction No. 15 requires:

(i) commencement of the panel's functions within 20 business days after its appointment (see cl 4(4)); and

(ii) a panel to submit its report to the planning authority (i.e., the Shire) within 20 business days for a one person panel; 30 business days for a two person panel; or 40 business days if the panel consists of three or more members (see cl 4(5)).

(h) The Shire must then consider the panel's report before deciding whether or not to adopt the amendment (see P&E Act, s 27). In this respect, Ministerial Direction No 15 cl 4(6)(b) requires the planning authority to decide to abandon an amendment or adopt an amendment (where a panel was appointed to consider submissions) within 40 business days after the date the planning authority receives the panel report.

(i) If the Shire adopts the amendment (with or without changes), then the amendment is submitted to the Minister for Planning. In this respect, Ministerial Direction No. 15 cl 4(7) requires the planning authority to submit an adopted amendment to the Minister for Planning within 10 business days of the date the amendment was adopted by the planning authority.

(j) The Minister then decides whether to approve the amendment or part of the amendment (with or without changes) or refuse to approve the amendment (or part of the amendment) (see, e.g., P&E Act, Part 3, Division 3). In this respect, Ministerial Direction No. 15 cl 4(8) requires the Minister for Planning to decide on the amendment submitted to the Minister as adopted by a planning authority within 40 business days of receiving the adopted amendment.

(k) Importantly, it is only after the Shire adopts the amendment that it can consider it as a 'seriously entertained' planning scheme amendment when considering planning permit applications. I understand that there are Victorian Civil and Administrative Tribunal decisions that establish principles for when a planning scheme amendment can be considered or given any weight in deciding a planning permit, the effect of which is that the Shire cannot put any weight on the amendment up to this point. The consideration of 'seriously entertained' planning scheme amendments is permitted by section 60(1A)(h) of the P&E Act. This is one reason why the Shire is exploring the prospect of an interim EMO amendment.

(l) If, in the alternative, the Shire abandons the amendment, then the Shire must tell the Minister for Planning, including its reasons for the decision. This is then the end of the process – the amendment does not proceed (see e.g., P&E Act, s 28).

(m) If the Minister for Planning approves the amendment, the Minister must publish notice of the approval of the amendment in the Government Gazette. The amendment comes into operation when the notice of approval of the amendment is published in the Government Gazette (see e.g., P&E Act, ss 35 – 38).

44. The above is based on Shire being the planning authority. In these circumstances, the Minister can exempt the Shire from certain notice and exhibition requirements outlined above (see, e.g., P&E Act, s 20(1)-(3)). In comparison, as set out further below in respect of the second pathway, when the *Minister* is the *planning authority*, the Minister can exempt herself from wider notice and exhibition requirements (see P&E Act, s 20(4)).

45. Further, and importantly, with respect to timeframes imposed by Ministerial Direction No. 15 referred to above, each of those timeframes can be changed by the Minister. That is, Ministerial Direction No. 15, cl 5 gives the Minister the power to grant an exemption from the need to comply with one or more of the requirements of the Direction in relation to a particular amendment. Such an exemption can be granted with (or without) conditions. For example, where more time is required to complete one or more of the steps, the Minister may grant an extension of time.

46. In my professional experience, the timelines in Ministerial Direction No. 15 are commonly exceeded, and the Minister often grants exemptions from those timelines, due to the nature and complexity of the amendment. For example, in relation to the Shire's C219morn amendment, which followed the first pathway, the Shire sought Ministerial authorisation on 16 February 2018, and then ultimately submitted C219morn to the Minister for approval on 19 September 2024. To the best of my knowledge, the Minister has still not made a decision on C219morn. In relation to the Shire's C271morn amendment, which introduced

flooding and erosion controls around Westernport Bay, the Shire submitted its authorisation request to the Minister on 9 September 2020, submitted C217morn to the Minister for approval on 12 April 2023, and it was then approved by the Minister on 19 December 2024 and gazetted on 9 January 2025. These timeline do not take into account the preparatory work the Shire had to undertake prior to making its authorisation requests to the Minister in respect of these amendments.

47. The **second pathway** (i.e., the fast track amendment process) open to the Shire to seek to pursue with respect to an interim EMO amendment (or, for that matter, a permanent EMO amendment) has one main difference to the first pathway: the Minister for Planning, rather than the Shire, is the planning authority. This enlivens the discretions afforded to the Minister to avoid certain public consultation requirements under the P&E Act. As set out above, it is my understanding that the Shire will most likely pursue the second pathway, as a first step, with respect to an interim planning scheme amendment to subject all properties in the high susceptibility landslide area to the EMO.

48. Under the second pathway, the Shire must first make a request to the Minister for Planning for the Minister to prepare and approve the interim EMO amendment (i.e., the Minister must accept the invitation to be the planning authority for the purposes of the amendment). Should the Minister *accept* this request, s 20(4) of the P&E Act enables the Minister for Planning to amend the MPPS with exemption from certain notice requirements, being:

    (a) the requirements in s 17 of the P&E Act (these are notice provisions to the MPPS, the Minister, and any other person the Minister specifies);

    (b) the requirements in s 18 of the P&E Act (the public availability requirements as set out in s 197A of the P&E Act);

    (c) the requirements in s 19 of the P&E Act (the public notice requirements, including, for example, those in s 19(1)(b) – i.e., the ordinary requirement to give notice of the preparation of the amendment to the owners and occupiers of land that the Minister believes may be materially affected by the amendment, and those in s 19(4) requiring a date to be set for submissions to the planning authority).

49. It is my understanding that the effect of the Minister exempting herself from, for example, the notice requirements in s 19 of the P&E Act, is that because no notice has been given under that provision, the ability for persons to make submissions in respect of that notice is not triggered (see, e.g., P&E Act, s 21(1)). This then also renders redundant the provisions concerning the requirement to refer submission/s to a planning panel (see, e.g., P&E Act, s 23(1)). Instead, in effect, once the Minister has prepared the amendment, the Minister can then approve the amendment (or not approve it) in accordance with s 35 of the P&E Act.

50. The circumstances in which the power conferred on the Minister under s 20(4) of the P&E Act may be used by the Minister are if the Minister considers that "*compliance with any of those requirements* [i.e., those set out in ss 17, 18 and 19 of the P&E Act and the Regulations] *is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.*"

51. To request the Minister for Planning to prepare and approve a planning scheme amendment under s 20(4) of the P&E Act, the Shire must include in its request to the Minister appropriate evidence and information to justify the Shire's request, including:

    (a) the power the Minister is being asked to use;

    (b) the reasons why the request is being made;

    (c) if the relevant legislation specifies circumstances in which the Minister may use the power - how and why those circumstances apply (i.e., why the conditions to the Minister using their power under s 20(4) of the P&E Act are met in this circumstances);

    (d) why the normal planning process (i.e., the first pathway) should not be followed, including any evidence to support the reasons given;

    (e) the type, extent and outcome of any consultation that has been undertaken by the Shire with any affected government department, authority or person (including the owners and occupiers of land affected by the proposed amendment);

    (f) what consultation, if any, has occurred with the Department of Transport and Planning;

    (g) the effect of the proposed amendment; and

    (h) details of how the proposal has previously been dealt with by the Shire (if at all).

52. In addition, Council must submit the amendment documentation including the Explanatory Report, Amendment Maps and EMO Schedules, to the Minister.

53. Based on my professional experience, I estimate that it will take up to 4 months for the Shire to prepare this documentation for submission to the Minister for Planning.

54. The time it then takes for the Minister to:

    (a) consider the Shire's request that the Minister be the responsible authority and prepare the amendment under s 20(4) of the P&E Act;

(b) consider whether or not to exempt herself from any of the notice requirements that the Minister can exempt herself from under s 20(4) of the P&E Act; and

(c) decide whether or not to approve the amendment,

is entirely up to the Minister for Planning.

55. In my opinion, this second pathway is the preferred pathway for the Shire to follow in the instance of a proposed introduction of an interim EMO schedule (or schedules) for all high (and possibly medium) susceptibility landslide areas within the Shire. That is because, in my view, it is likely to result in a more timely planning scheme intervention, should the Minister make the interim EMO amendment. The benefit of an interim EMO amendment being fast tracked through the planning amendment process would be to give the Shire specific controls to consider any risk of landslip or landslide when assessing a planning permit application. Without such a planning scheme amendment, the Shire will need to continue to rely on existing provisions in the MPPS to consider those risks. I understand that David Simon gave oral evidence about these matters when appearing before the Board of Inquiry.

56. **In respect of Question 4(d)**, i.e., any difficulties or barriers to the implementation an interim EMO amendment on the basis of the Shire proceeding on the basis of the second pathway, the principal difficulties or barriers are: lack of public consultation; reliance on existing data; the possibility that the Minister may not agree to make the interim EMO amendment under the second pathway, resulting in the Shire having to (instead) follow the first pathway for the interim EMO amendment; and the inability of the Shire to present the interim EMO amendment request to the Minister alongside a request for authorisation to prepare the permanent EMO amendment, in light of the Shire's need to obtain further data prior to introducing any permanent EMO amendment. I give more detail around these issues below.

57. *Lack of public consultation*. To prepare and approve an interim EMO amendment under the second pathway, as set out above, the Minister may exempt herself (pursuant to s 20(4) of the P&E Act) from the ordinary public consultation requirements that otherwise apply under s 17, 18 and 19 of the P&E Act (and also the P&E Regulations). While such exemptions potentially simplify and speed up the process for the approval of an amendment (as compared to the mandatory steps under the first pathway), the corollary is that, should the Minister exercise her discretion to exempt herself under s 20(4) of the P&E Act from public consultation requirements, there may not be *any* (or, alternatively, there may be more limited) public consultation on the interim EMO amendment, including with the owners of properties that may be included in an interim EMO. This may create anxiety and anger in

some property owners whose properties would be subject to the interim EMO amendment, especially if the interim EMO amendment leads to them having to incur additional costs of preparing planning permit applications that would not otherwise have been required under the current MPPS, or if the interim EMO amendment impacts the cost of their home insurance (for example). It is my understanding on the basis of advice given by David Simon to me in the course of my preparing this witness statement, that the 'red' area in the Cardno 2012 Draft Report covers approximately 9000 properties, many of which are not presently subject to the EMO, but which would become subject to the EMO under an interim EMO amendment.

58. Alternatively, if the Shire prepares the interim EMO amendment under the first pathway, while there will be extensive consultation resulting from the notice and exhibition requirements under the first pathway, at the very minimum this will mean a period of between at least 12 to 18 months before the interim EMO amendment comes into operation. This means some land that is currently identified as having high landslide susceptibility will continue to not be covered by the EMO prior to the amendment commencing, during which time the Shire will have to continue to rely on the current processes it has adopted to consider landslide risk when a person makes an application for a planning permit for works or improvements on that land.

59. *Reliance on existing data*. It is my belief and understanding, based on my professional experience and my discussions with my colleague David Simon, that any interim EMO amendment will be based, at least in part (and likely substantially based) on the results of the Cardno 2012 Draft Report (MSC.5012.0001.440) as referred to in David Simon's second witness statement at [62]. However, the Cardno 2012 Draft Report does have some limitations (see, for example, Section 6 of the Piper and Slade Paper referred to in the Witness Statement of Mr Bulent Oz at [41] (i.e., exhibit MSC.5001.0001.6105), and the Cardno 2012 Draft Report at pp. v, 80-81). For example, based on David Simon's advice to me, one issue the Shire has identified is that there may be areas within the 'red' area shown in the Cardno 2012 Draft Report that are not actually the subject of a high risk of landslide when closer examination is undertaken of those areas. Equally, there may be areas outside the 'red' (in either the 'yellow' and 'green' areas) that should, as a result of closer inspection, be included in areas considered to be of a high susceptibility to landslide/landslip, such as the 'runout' areas downslope of high-risk areas or upslope due to mapping anomalies. As a result, the Minister for Planning may require an update to this data prior to proceeding with any interim EMO amendment.

60. *Ministerial delay and discretion*. The Minister is not required to make a decision within a specified timeframe in response to any requests made by the Shire. As a result, the second

pathway may take longer than anticipated. Further, the Minister's powers under s 20(4) of the P&E Act are discretionary. For example, the Minister *may* accept being the planning authority for the interim EMO amendment, but determine not to exempt herself from any of the provisions she is able to exempt herself from (or, alternatively, only some), in which case the interim EMO amendment would have to follow the normal planning scheme amendment process, or parts of that process, as set out in relation to the first pathway. The Shire must also submit the amendment documentation including the Explanatory Report, Amendment Maps and EMO Schedules. This will take up to 4 months to prepare.

61. *Conducting the interim EMO amendment process prior to the permanent amendment process.* It is my understanding, based on my previous experience, that the Department of Transport & Planning usually considers interim controls *concurrently* with an authorisation request for permanent controls (i.e., the authorisation request to the Minister to commence preparation of the permanent EMO amendment, after which, if approval is granted by the Minister, the Shire would then (as the public authority) undertake its notice requirements etc in accordance with the first pathway for those permanent controls, concurrently to the Minister progressing the interim controls). As a result, there is a risk that the Minister for Planning won't approve any request made by the Shire for an interim EMO amendment under the second pathway, as the Shire will not be in a position to (at the same time) make a request for permanent controls, as that process depends on obtaining updated landslide/landslip susceptibility data and risk assessment, which will take between 18 months and 2 years from procurement (I detail this further below).

Question 4(b): A detailed explanation of the process the Shire would need to follow to obtain a planning scheme amendment to update the existing EMO schedules to apply the EMO to land not currently captured by the current EMO schedules.

62. In order to update the existing EMO schedules in the manner contemplated by Question 4(b), in my opinion there are two options. First, a new specific schedule could be developed that contains its own provisions (preferred approach). Alternatively, the existing EMO1 and EMO2 could be consolidated, amended and expanded to cover the high (and/or medium) susceptibility areas but leave the other area-specific EMOs as they are (EMO3, 4, 5 and 6). I note, however, that EMO1 and 2 are older schedules that don't include the detailed objectives, statement of risk, application requirements or decision guidelines that more recent EMO schedules include.

63. In the foregoing, I refer to the amendments contemplated by Question 4(b) as a "**permanent EMO amendment**". That is so because it is my understanding that prior to any such amendment/s, the existing landslide susceptibility data held by the Shire stemming from the Cardno 2012 Draft Report will need to be updated, and a risk assessment

completed, before any permanent EMO amendment is proceeded with that has the effect of updating or amending the existing EMO schedules and applying a permanent EMO schedule or schedules to land not currently captured by the current EMO schedules. Further, it is my understanding that the preferred approach is not to simply update or amend the existing EMO schedules once the landslide susceptibility data and risk assessment is completed, but rather to review the existing EMO schedules in light of the updated data and determine whether revised or new schedules would be most appropriate. It is also important to note that this may result in existing schedules being removed. It is my understanding that updating of the existing landslide susceptibility data and risk assessment is anticipated to take between 18 months and 2 years to complete (from procurement), and that the cost of that work is estimated at $572,000 (however, this cost could increase, depending on the consultancy costs). In my experience, it will then take, at a minimum, another 18 months to 2 years to undertake the required planning scheme amendment process.

64. As to the pathways that are available for any such permanent EMO amendment, they are the same as the pathways available for any interim EMO amendment as I set out above. That is, the first pathway and the second pathway are both available.

65. **In respect of Question 4(d)**, i.e., any difficulties or barriers to the implementation of a permanent EMO amendment, the main difficulties or barriers are cost and time, irrespective of whether the first pathway or the second pathway is ultimately proceeded with. As set out above [63], as a first step, the Shire's existing landslide susceptibility data and risk assessment needs to be updated before the Shire can proceed with any permanent EMO amendment. As set out above at [63], this is anticipated to take between 18 months and 2 years from procurement to complete, at an estimated cost of $572,000.

66. Once this data update and risk assessment is complete, it is my opinion, based on my professional experience, that the Shire would then undertake a planning scheme amendment *most likely* under the first pathway (although no decision has yet been taken on this). As such, the Shire would be the planning authority and follow the steps and timeframes set out under the first pathway above. It is my understanding, from my professional experience, that undertaking a planning scheme amendment under the first pathway usually takes 18 months to 2 years, although it can take much longer, depending on how long it takes the Minister for Planning to authorise and approve the amendment and how many (and the complexity of) submissions received as part of the exhibition of the amendment. In my opinion, due to the nature, complexity and public interest in any permanent EMO amendment, including because any such amendment would be Shire wide and impact on many thousands of properties, it is likely that this process will take much

longer than 18 months to 2 years. In this respect, I reiterate the examples I provided at [46] above.

67. In particular, under the first pathway, should submissions be received (which is a safe assumption given the large number of properties likely to be affected by an permanent EMO amendment), the number and complexity of submissions received by the Shire will determine the length of time required by the Shire to consider those submissions. Further, if a planning panel is appointed, the length of time required by the panel to undertake its hearings and prepare its report will also be impacted by the number and complexity of submissions received. Further, Ministerial Direction No.15 does not specify a timeframe for the Minister to make a decision at the initial *authorisation* stage (i.e., pursuant to s 8A of the P&E Act), which adds further risk of delay to this process. And, as noted above, Ministerial Direction No.15 also provides the Minister with the power to grant an exemption from the need to comply with one or more of the requirements (including timelines) in the Direction, adding further risk that the timelines as set out in that Direction may not apply.

20/06/2025

Signed by Katanya Barlow