

BOARD OF INQUIRY INTO THE McCRAE LANDSLIDE

David Simon

Fourth Witness Statement

Prepared for the purpose of a Board of Inquiry

11 June 2025

FOURTH WITNESS STATEMENT OF DAVID SIMON

Name:	David Simon
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Occupation:	Acting Director Planning and Environment
Date:	11 June 2025

1. I have previously provided three witness statements to the Board. My first witness statement is dated 11 April 2025, my second witness statement is dated 17 April 2025 and my third witness statement is dated 7 May 2025.
2. I make this fourth witness statement in response to the Request to Produce a Witness Statement dated 12 May 2025 (**Notice**). This statement has been prepared with the assistance of lawyers and Shire officers.
3. 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.
4. I address the questions in the Notice from the perspective of the Planning and Environment Directorate within the Shire. I am informed by the Shire that Claudio Flores has also provided a witness statement in response to the questions in the Notice.

Risk and response - Question 1

Is it the case that following the 15 November 2022 Landslide and up to the First 2025 Landslide, the Shire did not take any steps to prevent or minimise the risk of a further landslide occurring in the vicinity of 10-12 View Point Road, McCrae.

1. The answer is no, in that the Shire took various steps in response to the 15 November 2022 Landslide to prevent or minimise the risk of a further landslide occurring. Those steps are addressed in the witness statement of Mr Flores.
2. From a planning perspective, the Shire did not take any new or additional steps to prevent or minimise the risk of a further landslide other than the practice it already had in place (as described in my second witness statement at [63]-[69]). Put another way, following the 15 November 2022 Landslide the steps taken by the Shire to minimise the risk of a further landslide

occurring in the vicinity of 10-12 View Point Road, McCrae (from a planning perspective) were the same steps it had already been taking, namely the application of its practice for planning permit applications in areas within a high landslide susceptibility area. However, that practice was not directly engaged as no planning permit applications were received by the Shire in the vicinity of 10-12 View Point during the period between the landslides. I address the steps concerning the Shire's existing practice below in answer to question 2.

3. I also provide answers to questions 3 and 4 regarding steps considered or not considered by the Shire concerning the Mornington Peninsula Planning Scheme (**MPPS**) as applicable to 10-12 View Point Road, McCrae.

Risk and response - Question 2

If the answer to question 1 is no, what steps were taken?

4. The steps taken are addressed in the witness statement of Mr Flores.
5. From a planning perspective, given the content of my answer to question 1 I note the following. In my second witness statement at [63]-[69] I set out the Shire's practice concerning planning permit applications in areas within a high landslide susceptibility area. This practice was employed throughout the Shire between the 2022 Landslide and the First 2025 Landslide. I am not aware of any planning permit applications received by the Shire for properties in the vicinity of 10-12 View Point Road, McCrae between the 2022 Landslide and the First 2025 Landslide. However, it is my belief that if such a planning permit application was received, and it concerned an area within a high landslide susceptibility area on the 2012 GIS Assessment, the application would have been addressed in accordance with practice set out in the Process Document [[MSC.5005.0044.5961](#)].

Risk and response - Question 3

If the answer to question 1 is yes, did the Shire consider taking any steps?

6. The answer to question 1 is no. However, given the content of my answer (from a planning perspective), I note that consideration was given (in the planning context) to taking steps to prevent or minimise landslide risk on a Shire-wide basis.
7. In this regard I refer to my first witness statement at [47]-[54] and my second witness statement at [72]-[77], which address the state of my knowledge concerning the 2018 Review (i.e., prior to the 2022 Landslide) and which included recommendation 210 and 211, and the 2023 Review (i.e., which occurred after the 2022 Landslide) and which also concerned recommendation 210 and 211 of the 2018 Review. I note that the 2018 Review occurred prior to the 2022 Landslide, and the resultant recommendations could not therefore be characterised as the Shire

considering taking any steps in *response* to the 2022 Landslide. They were, however, relevant to the question of preventing or minimising landslide risk on a Shire-wide basis.

8. Recommendation 211 of the 2018 Review would by its terms necessarily require the updating of landslide susceptibility data held by the Shire resulting from the 2012 Cardno Report and GIS landslide susceptibility layer, which is data that is Shire-wide and therefore encompasses McCrae. In this respect, by the 2023 Review containing an implementation plan which assigned recommendation 211 of the 2018 Review a “medium” priority, the steps the Shire took to conduct the 2023 Review and develop that implementation plan was consideration by the Shire of taking steps to prevent or minimise the risk of landslide occurring (but not necessarily a *further* landslide after the 2022 Landslide) across the whole Shire as a result of buildings or works that are not subject to an Erosion Management Overlay (**EMO**) under the current EMO schedules to the MPPS, but might become subject to an EMO schedule/s at the conclusion of the process envisaged by recommendation 211 of the 2018 Review.
9. I otherwise do not know of any consideration being taken by the Shire of any other steps with respect to planning controls.

Risk and response - Question 4

If the answer to question 3 is no, why did the Shire not consider taking any steps?

10. As stated in response to question 3, from a planning perspective, the Shire did consider taking steps on a Shire-wide basis.
11. As to why the Shire did not consider taking any specific steps in relation to the 15 November 2022 Landslide, to the best of my knowledge the reason is that the Shire considered its existing practice was adequate to guard against further landslide risk in that area. Further, the Shire was taking advice from experts and following that advice in relation to the steps to be taken in relation to the properties involved in the 15 November 2022 Landslide.

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Signed by David Simon