

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

## **Bulent Oz Witness Statement**

**11 April 2025**

**WITNESS STATEMENT OF BULENT OZ**

**Name:** Bulent Oz  
**Address:** 90 Besgrove Street, Rosebud Vic 3939  
**Occupation:** Acting Chief Executive Officer  
**Date:** 11 April 2025

1. I make this statement to the Board of Inquiry 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 Mornington Peninsula Shire (the **Shire's**) officers.
2. This statement is true and correct to the best of my knowledge and belief, using reasonable endeavours in the timeframe specified in the Notice. Unless otherwise stated, I make this statement based on matters within my knowledge and documents and records of the Shire. I have also used and relied upon data and information produced or provided to me by officers within the Shire.

**Roles and Responsibilities****Employment history**

3. I have been employed by the Shire for approximately 10 years and have held the following positions:
  - (a) Interim Financial Controller, from approximately June 2015 to June 2016;
  - (b) Financial Controller, from approximately June 2016 to August 2019;
  - (c) Chief Financial Officer, from approximately August 2019 to November 2024;
  - (d) Acting Chief Executive Officer (CEO) from approximately 27 November 2024 to present.
4. I will cease acting as CEO on 15 April 2025. A permanent CEO has been appointed and will commence on 16 April 2025.
5. I hold a post graduate degree in economic and accounting studies from La Trobe University and a Bachelor's Degree in Economics from Boğaziçi University, Istanbul. I am also a Certified Public Accountant (**CPA**).

## Response to Questions

6. This statement responds to questions 1 – 3, 9, 11 – 13, and 18 – 20 in the Notice.

### Question 1

Provide an overview of the Shire's responsibilities, powers, duties and functions in relation to the prevention and management of landslides and landslips in the McCrae Area, including by reference to any applicable regulations or legislation.

7. My response to question 1 is informed by my general experience working in the Shire's leadership as well as information provided by various teams across the organisation. In this respect, where I refer to regulations or legislation in answer to Question 1, I do so to the best of my knowledge and based on my experience. In the time available to prepare this witness statement, I have not been able to undertake an exhaustive review of all potentially applicable legislation and regulations. Accordingly, it is possible that there is other legislation or regulations relevant to Question 1 and of which I am unaware or have not been able to recall in the time available to prepare this witness statement.

## Summary

8. In Victoria, the responsibility for the prevention and management of landslides and landslips is shared across multiple organisations and levels of government, with no single entity having complete responsibility.
9. The Shire's responsibilities, powers, duties and functions in relation to the prevention and management of landslides and landslips in the McCrae Area (**the Shire's role**) depends, firstly, on the nature of the land affected: that is, whether it is Crown land subject to a Committee of Management (**COM**) and/or Crown land that is managed by the Shire; land that is owned by the Shire; or land that is privately owned. There is no 'one size fits all' approach.
10. Secondly, it is important to note that the Shire's role centres, principally, around four key areas: planning requirements, emergency management planning and response, building surveyor management, and infrastructure maintenance. Any of the Shire's responsibilities, powers, duties and functions in respect of landslips and landslides arise in those contexts.
11. In relation to planning requirements, the Shire's role is to assess and determine planning permit applications, which in some instances are required due to risks associated with landslips and landslides. This prevention role is necessarily limited to new improvements on land, for which permits are applied for; it does not assess, retrospectively, risks arising from previous improvements to land that did not require a planning permit at the time.

12. Under Victoria's emergency management framework, the Shire's role is as a member of the committee that is responsible for developing an emergency management plan for the Mornington Peninsula shire. Landslips and landslides can, depending on their nature, be emergencies under that framework. In this respect, the Shire also has specific roles in relation to the recovery phase of emergencies.
13. Separately, the Shire, through its municipal building surveyor, plays a limited management role in response to landslips or landslides, by (in some instances) issuing orders that have the effect of requiring persons to evacuate or vacate a building affected by a landslide or landslip.
14. Finally, the Shire plays a role in maintaining and updating the Shire's infrastructure and assets, including roads and wider assets, which contributes incidentally in some instances to the prevention and management of landslips and landslides.

#### **Crown land subject to a COM**

15. In relation to Crown land subject to a COM, the Shire's role will largely depend on whether or not the Shire is a member of a COM appointed in respect of that land and if so, the composition of that COM. In some instances, the Shire itself is the COM. In other instances, the Shire is a member of a COM that includes other members. Sometimes, the Shire is not the COM or a member of it at all.
16. To the best of my knowledge, the *Crown Land (Reserves) Act 1978* (Vic) (**Crown Land Act**) governs Crown land the subject of a COM. The Crown Land Act includes provisions about the powers of a COM to improve, maintain and control land that is subject to a COM. My understanding is that the Crown Land Act does not impose any specific responsibility, power, duty or function to prevent or manage landslips or landslides on the COM.
17. I have also been provided with a copy of a document entitled "Committee of Management Guidelines for voluntary Crown land reserve committees of management – December 2021" (**COM Guidelines**) [[MSC.5007.0001.1194](#)]. My understanding is that the COM guidelines were published by the then Department of Environment, Land, Water and Planning (now Energy, Environment and Client Action, **DEECA**) to assist the COM established under the Crown Land Act (see: COM Guidelines, 1.3), and that the Shire has regard to these COM Guidelines in respect to how it performs its role as a member of a COM or as *the* COM as the case may be.
18. The COM Guidelines do not refer to landslips or landslides. However, Chapter 6 of the COM Guidelines concerns risk management and organisational planning. It is my understanding that, in particular, the Water and Coast Team within the Shire, which is the team generally responsible for the Shire's role as a member of, or as, the COM for Crown land, takes account of the COM Guidelines in performing that role. The Water and Coast Team is led by Laura

Crilly, who reports to Melissa Burrige (within the Climate Change and Sustainability team), who in turn reports to David Simon, Director of Planning and Environment.

#### **Land the Shire manages for and on behalf of the Crown**

19. In respect of land that the Shire manages for and on behalf of the Crown, it is my understanding that the *Marine and Coastal Act 2018* (Vic) (**Marine and Coastal Act**) impacts on the Shire's management of that land. Firstly, the Marine and Coastal Act can in certain circumstances require the Shire, as the Crown land manager for land that is marine and coastal Crown land, to prepare and make a coastal and marine management plan.
20. Secondly, for all Crown land for which that the Shire is the Crown land manager for under the Marine and Coastal Act, the Shire is under an obligation, pursuant to section 76 of the Marine and Coastal Act, to implement the Marine and Coastal Policy, a Marine and Coastal Strategy, a product made under a regional and strategic partnership, an environmental management plan, and any coastal and marine management plan (in respect of that land).

#### **Shire owned land and privately owned land**

21. In relation to **Shire owned land**, the Shire is like any other private property owner. In particular, the Shire's role with respect to building works, other works, vegetation removal, or other improvements on that land is governed (like any private property owner) by the *Planning and Environment Act 1987* (Vic) (**P&E Act**), and the *Mornington Peninsula Planning Scheme* (**MPPS**).
22. The Shire's role is therefore inevitably dependant in this instance on what is proposed to be done to or on that land by the Shire, and whether or not that land is subject to certain overlays under the MPPS. In this context, the Shire operates in two ways: as the owner, requiring (in some instances) a planning permit; and as the authority responsible for assessing and determining a planning permit application in accordance with the applicable provisions of the MPPS.
23. Finally, there is **privately owned land**. In this respect, the Shire's role and responsibility depends on the circumstances, which are identified further below. Private property owners bear primary responsibility for managing landslide risks on their own land. This includes implementing and maintaining appropriate drainage systems, retaining walls, and other stabilisation measures where necessary. Property owners must comply with any building and planning requirements specific to landslide-prone areas, including obtaining geotechnical assessments before construction on high susceptibility land. When landslips occur on private property, the owner is generally responsible for remediation costs, though insurance may cover some expenses depending on the policy.

**The Shire's prevention role in respect of Shire owned land and privately owned land: planning requirements**

24. In relation to privately owned land and Shire owned land, the Shire has a role in assessing and determining permit applications made by landowners pursuant to the MPPS. In particular, certain buildings and works, and vegetation removal, may trigger a requirement for the owner to apply for and obtain a planning permit under the MPPS before those improvements are made.
25. At a high level, section 6(2)(e) of the P&E Act provides that a planning scheme may regulate or prohibit any use or development in hazardous areas or in areas which are likely to become hazardous areas. The MPPS achieves this, in various ways.
26. The MPPS consists of various state and local controls. Firstly, the broader State policy with respect to environmental risks and amenity is at clause 13. Notably, clause 13 states that planning should strengthen the resilience and safety of communities by adopting a best practice environmental management and risk management approach, and should identify, prevent and minimise the risk of harm to the environment, human health, and amenity through both land use and development compatibility and effective controls to prevent or mitigate significant impacts.
27. Within clause 13.04 Soil Degradation, there is clause 13.04-2S which concerns erosion and landslip. The objective of this part of the planning policy is to protect areas prone to erosion, landslip or other land degradation processes. Strategies identified include to: identify areas subject to erosion or instability in planning schemes and when considering the use and development of land; prevent inappropriate development in unstable areas or areas prone to erosion; and to promote vegetation retention, planting and rehabilitation in such areas. Also relevant are clauses 13.04-2L-01 (Erosion and landslip, Mornington and Flinders, applicable to land affected by Erosion Management Overlay Schedules 4 and 5), and 13.04-2L-02 (Erosion and landslip – Ballar Creek, Mount Eliza, applicable to land affected by Erosion Management Overlay Schedule 3).

***The Erosion Management Overlay in the MPPS***

28. Planning requirements within the MPPS then contain more specific detail about how and when the MPPS can prevent or mitigate landslip and erosion. The principal overlays relevant to this are: the Erosion Management Overlay (**EMO**) at clause 44.01 of the MPPS, and the Environmental Significance Overlay (**ESO**) at clause 42.01 of the MPPS.
29. However, the primary and most effective control to prevent or mitigate landslip and erosion is the EMO. The EMO applies to land shown in the planning scheme map as "EMO", subject to applicable exceptions. The purpose of the EMO is to protect areas prone to erosion, landslip,

and other land degradation or coastal processes by minimising land disturbance and inappropriate development. If the EMO applies to land, it can trigger the requirement for a planning permit for buildings and works, as set out in clause 44.01 and the schedules to clause 44.01, including for types of development that are ordinarily exempt from planning permits under Statewide controls in clause 62.02 of the scheme.

30. Under the EMO, a permit is also required to remove vegetation, including non-native vegetation, unless a local schedule to clause 44.01 has an exemption or meets Statewide exemptions at clause 44.01-4 – Table of Exemptions.
31. If a planning permit is required for new buildings and works or vegetation removal under the EMO, its local schedule may contain: erosion management objectives, a statement of risk, further information requirements, and further decision guidelines. There are six local schedules to the EMO.
32. Where such overlays exist on the Mornington Peninsula, the Shire's role is to assess the planning permit application and to ensure that if a permit is granted for a development, that development is acceptable having regard to the risks and contains appropriate conditions to mitigate such risks.
33. Following that, the landowner or proponent has a responsibility to comply with that planning permit and any conditions within it, including any endorsed plans or technical reports, such as geotechnical reports.

***Contextual matters concerning the P&E Act, MPPS and EMO***

34. As identified below, there are some important contextual matters to take into account when considering the Shire's role.
35. Firstly, section 6(3) of the P&E Act effectively prevents the Shire from making any amendment to the MPPS that would stop the continuation of a use or development that was lawfully established before the amendment came into effect. As such, even if an EMO or other control exists on land, the Shire under the P&E Act cannot directly mitigate existing risk associated with an existing use or development of land.
36. Secondly, the EMO does not and cannot regulate or prohibit land use (as distinct from development) as currently drafted. This creates the unique problem that the risk associated with the proposed use is not considered, but the risk associated with the proposed development is considered, even if (for example) land has been mapped and categorised as so high risk that no use of the land should occur, despite any mitigation measures proposed through a proposed development.

37. Thirdly, clause 44.01-7 of the EMO provides that an application under the EMO is exempt from public notice requirements and is exempt from third party appeal rights to the VCAT.
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 has the purpose of facilitating the removal of vegetation in specified circumstances to support the protection of human life and property from bushfire. 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 longstanding issue, which the Shire (as well as other local councils) has raised with the State Government. That 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.

***Additional requirements imposed by the Shire in the McCrae area***

40. It is my understanding that in about 2000, the Shire commissioned geotechnical engineering firm **Cardno Lane Piper Pty Ltd** to conduct a shire wide assessment of landslide susceptibility (**the Cardno GIS Assessment**). That study concluded in around 2012. That study, in effect, classified areas of the Shire into subjective zones of 'high', 'medium' and 'low' landslide susceptibility.
41. I have been shown a conference paper by Piper, J.P. and Slade, D.B. (2012) GIS Assessment of Regional Landslide Susceptibility, Mornington Peninsula Shire, in Prof. G Narsilio, 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](#)]. I am informed that Mr Davin Slade carried out the Cardno GIS Assessment with his colleague, Mr John Piper. I understand that the Piper and Slade Paper reflects the results of the Cardno GIS Assessment.
42. As part of the Cardno GIS Assessment, I am informed that the Shire was provided with a geographical information system (**GIS**) which overlaid those low (in green), medium (in yellow) and high (in red) landslide susceptibility areas over all land in the Shire. This GIS is now used by the Shire and its staff, including in the assessment of planning permit applications. In the course of preparing this witness statement I caused to be prepared two images showing the GIS. The first image, which is a zoomed out image in respect of the McCrae area, is at

[\[MSC.5014.0001.0010\]](#). The second image, which is a close up of the area where the 2022 landslide and 2025 landslips occurred, is at [\[MSC.5014.0001.0068\]](#).

43. It is my understanding that it has been the Shire's practice to impose additional planning requirements on all properties that are mapped as falling within the areas colored in red (i.e., high susceptibility), including in the McCrae area, so as to prevent and manage the risk of landslides and landslips. In the time available, I have not been able to ascertain precisely when exactly this practice commenced, however it is my understanding that it was put in place at some period of time after the Cardno GIS Assessment was concluded in 2012, and was a practice in place prior to 2022.
44. It is my understanding that this additional planning requirement is achieved by requiring planning applications for dwellings or other related applications in red (i.e., high susceptibility) areas to be accompanied by a geotechnical report in accordance with Australian Geomechanics Society's (AGS) 'Practice Note Guidelines for Landslide Risk Management 2007' (AGS Guidelines 2007). The geotechnical report is also required to be peer reviewed and the peer review must be submitted to the Shire before the determination of the permit application. These requirements are not required by any legislation or regulation, but the Shire has chosen to adopt these requirements as matter of practice as an additional precautionary measure.
45. Further, prior to the commencement of any works for the development, a Form B 'Structural/Civil/Geotechnical Engineering Declaration' in accordance with the AGS Guidelines 2007 must be completed by a Structural Engineer Registered as a Civil or Structural Endorsed Building Engineer with the Victorian Business Licencing Authority and also a Specialist Geotechnical Engineer or a Specialist Engineering Geologist as defined in the AGS, and a copy lodged with the Shire.
46. Finally, prior to the occupation of the building, a 'Final Geotechnical Certificate' must be completed by a Specialist Geotechnical Engineer or Specialist Engineering Geologist as defined in the AGS Guidelines 2007, and a copy lodged with the Shire.

### **Conclusion**

47. In this way, the Shire's prevention role with respect to planning requirements is comprehensive, but also prospective. The Shire's role is to assess planning permits and works that it is notified of and for which a permit is applied for. It is not a preventative role with respect to buildings and vegetation removal (for example) that have occurred historically.

**The Shire's role in respect of landslips and landslides that constitute an emergency under the Emergency Management Act 2013 (Vic)**

48. The Shire ensures it is prepared for emergencies and for response. The Shire's Emergency Management Team are responsible for emergency management if an emergency occurs within the municipality.
49. Pursuant to the *Emergency Management Act 2013* (Vic) (**EMA**) the Shire is required to establish a Municipal Emergency Management Planning Committee (**MEMPC**) for the Mornington Peninsula shire. The membership of that committee is broad: it includes nominees from police, fire services, ambulance services, the Victorian State Emergency Service, and the Department of Health and Human Services (among others). The Shire must nominate its CEO, or a member of staff nominated by its CEO, as chairperson of the MEMPC.
50. The chairperson of the MEMPC for the Shire is Andrew Brick, the team leader of the Emergency Management Team. Mr Brick reports to Dale Gilliatte, the Manager of Community Safety, Health and Compliance.
51. The MEMPC has several functions, including to be responsible for the preparation and review of a Municipal Emergency Management Plan (**MEMP**). The MEMPC also has the function of ensuring the Plan is consistent with the State Emergency Management Plan (**SEMP**) and the relevant regional emergency management plan.
52. In particular, the MEMP must contain provisions that provide for the mitigation of, response to, and recovery from emergencies. Emergencies are defined in the EMA. The MEMP must also specify the roles and responsibilities of agencies in relation to emergency management, which is defined in the EMA.
53. The EMA sets out that in preparing the MEMP, the MEMPC must prepare the MEMP in accordance with guidelines issued by the Minister under the EMA. A copy of the currently applicable **Guidelines** is at [\[MSC.5006.0001.0779\]](#). The EMA also sets out how the MEMPC must consult during the preparation of the MEMP, and how the MEMP must be approved, published and reviewed. In particular, the MEMP must be approved by the Regional Emergency Management Planning Committee for the region, which for the Shire is the Southern Regional Emergency Management Planning Committee.
54. Importantly, the MEMP is not a document owned by the Shire. Rather, the MEMP is owned by the MEMPC and provides a strategic framework for the coordination of municipal level resources to aid response agencies before, during, and after an emergency.
55. The Municipal Emergency Management Plan 2025-2028 (Version 5.2) (**MEMP 2025-2028**) is the current MEMP for the Shire [\[MSC.5006.0001.1021\]](#). The MEMP 2025-2028 was approved by the Southern Metropolitan Emergency Management Planning Committee on 28

November 2024. Sections 7 and 8 of the MEMP 2025-2028 detail the response (including relief) and recovery arrangements for the Shire.

56. The predecessor to the MEMP 2025-2028 was the Municipal Emergency Management Plan 2021-2024 (**MEMP 2021-2024**). From 19 November 2021 until 16 November 2023, version 5.0 of the MEMP 2021-2024 applied, a copy of which is at [\[MSC.5006.0001.0001\]](#). From 17 November 2023 until the commencement of the MEMP 2025-2028 on 28 November 2024, version 5.1 of the MEMP 2021-2024 applied a copy of which is at [\[MSC.5014.0001.0011\]](#).
57. The MEMP 2025-2028 (and the MEMP 2021-2024) must also be read in context, including with regard to the SEMP [\[MSC.5007.0001.1278\]](#). In particular, as set out in the SEMP, agency roles and responsibilities for emergency management are set out in the document "Roles and Responsibilities Table 9: Control agencies for response". A copy of the relevant part of Table 9, as set out on the Emergency Management Victoria Website [\[MSC.5014.0001.0001\]](#). In Table 9, under the heading "Emergency: Natural Event" the control agency for response for a Landslide is VICSES (i.e. the Victorian State Emergency Service (**VICSES**)).
58. The MEMP 2025-2028 details hazards that have been formally addressed through a Community Emergency Risk Assessment process facilitated by VICSES. While landslide or landslip is not assessed as a stand-alone risk in the MEMP 2025-2028, it is generally assumed that a landslide is a secondary event that occurs following a significant weather event, such as large rainfall within a short period or earthquake. In this respect, Section 6.5 of the MEMP 2025-2028 lists as the Principal Emergency Risk "Storm, Severe Weather and Flash Flooding". That encompasses the wider emergency event that can lead to landslips and landslides, and provides details of the actions being taken about that hazard. In particular, section 6.5 refers to land use overlays and building and planning regulations under the heading "what is being done". These relate, in part, to the "mitigation" (or prevention) impact the MPPS can have on landslips and landslide. A similar approach was taken at section 6.5 in the MEMP 2021-2024.
59. While the Shire is not the control agency for response for a landslide, as the level of government closest to communities, the Shire plays a lead role in assisting communities through emergencies, notably during the preparedness and recovery phases. The Shire has adopted an all-hazards, people-centred approach to responding to and recovering from emergencies. The MEMP 2025-2028 provides guidance on how the Shire will work with other agencies during the response and recovery phases, including in respect of a landslip or landslide. When a landslip or landslide occurs, the recovery arrangements as set out in section 8 of the MEMP 2025-2028 will be triggered (as was the case in 2022 and 2025 landslides).

## **Municipal Building Survey's Role in Prevention and Management (Private Property).**

### ***Building Permits***

60. In general, building work must only be carried out with, and in accordance with, a building permit issued in accordance with the *Building Act 1993* (Vic) (**Building Act**). Pursuant to section 3(1) building work means work for or in connection with the construction, demolition or removal of a building. Under the Building Act, pursuant to section 17, an application for a building permit can be made to a Municipal Building Surveyor (**MBS**) or to a private building surveyor appointed under the Building Act (i.e., the relevant building surveyor). In practice, in the Shire's experience is that the vast majority of building permit applications are made to, and issued by, private building surveyors. The role of private building surveyors is dealt with further below.
61. Under section 19 of the Building Act, the relevant building surveyor (which is almost always the private building surveyor) must decide whether to issue the permit (with or without conditions), or refuse the permit. Under section 24 of the Building Act, a permit must be refused unless the relevant building surveyor is satisfied of certain matters, including that: any relevant planning permit has been obtained, and that the building permit will be consistent with that planning permit. In this respect, while the Shire has no control over whether or not a building permit is ultimately issued, where the MPPS requires a planning permit because, for example, the EMO is triggered, there is some interlinking between the MPPS and the building permit regime as set out in the Building Act.

### ***Municipal Building Surveyor powers under the Building Act***

62. Part 8 of the Building Act provides for three key types of enforcement measures which might be taken by the Shire to respond to and manage a landslide or landslip that has occurred, namely: emergency orders, and building notices and building orders. Each of these enforcement measures may be taken by a Municipal Building Surveyor (**MBS**).
63. Under section 102 of the Building Act, the MBS can make an emergency order if they are of the opinion that the order is necessary because of a danger to life or property arising out of the condition, use or proposed use of a building. An emergency order may direct an owner or occupier to evacuate a building (or land on which building work is being or is proposed to be carried out) and direct any person to also vacate a building. It may also prohibit any person from entering, using or occupying the building, for a period, unless permitted by the MBS.
64. In relation to the November 2022 landslide, the Shire's MBS issued emergency orders as in his opinion there was a danger to life or property arising out of the condition, use or proposed use of a building.

65. The MBS can also issue a building notice to an owner of a building if, pursuant to section 106 of the Building Act, they believe (relevantly) that a building or construction work does not comply with the Building Act, *Building Regulations 2018* (**Building Regulations**) or the approved building permit; or the building or place is unfit for occupation; or the building or land is a danger to the life, safety or health of any member of the public or any other person using the building or land. The building notice may require the owner to show cause as to why entry to, or the use or occupation of the building should not be prohibited, or why the owner should not evacuate the building.
66. After a building notice is issued, the MBS can then issue a building order under section 111 of the Building Act. The building order may direct the owner to evacuate the building, or to vacate the building, within a specified time. It may also prohibit any person from entering, using or occupying the building unless permitted by the MBS.
67. In this respect, the Building Act mainly establishes powers for the MBS to respond to landslips and landslides in certain instances after they have occurred.

#### ***Private Building Surveyors and the Shire***

68. Under section 76 of the Building Act private building surveyors are authorised to issue building permits, carry out inspections of buildings and building work, and issue occupancy permits. They conduct mandatory inspections throughout various stages of construction to ensure ongoing compliance with approved plans and regulatory requirements (see: section 34, Building Act).
69. Upon completion of building projects, pursuant to section 43 of the Building Act, private building surveyors issue occupancy permits (if required by the building permit), or, pursuant to section 38, certificates of final inspection (including where occupancy permits aren't required), confirming that the building is suitable for occupation. They are also responsible for enforcing compliance with building regulations and may (separately to the MBS) issue building notices (see: section 106 of the Building Act) and building orders (see: section 111 of the Building Act), including when non-compliance issues are identified.
70. Private building surveyors operate within a regulatory framework established by the Building Act and the Building Regulations. They must be registered with the Victorian Building Authority (**VBA**) and maintain appropriate qualifications and insurance coverage.
71. Although private building surveyors are hired by property owners or builders, they must maintain professional independence and make impartial decisions based solely on regulatory requirements rather than client preferences. They face certain limitations, including being prohibited from providing design advice for projects they are certifying, avoiding conflicts of interest, and not certifying their own work or the work of close associates.

72. The relationship between private building surveyors and local councils, including the Shire, is an important aspect of Victoria's building control system. When appointed to a project, private building surveyors must notify the relevant local council within seven days, and provide details about the building work and confirming their appointment (see: section 80 of the Building Act). This notification shifts the primary responsibility for building control functions from the Shire to the private surveyor for that specific project.
73. While not directly involved in issuing permits or conducting inspections when a private surveyor is engaged, the Shire maintains oversight through documentation. Private building surveyors must provide copies of building permits and other relevant documentation to the council for their records (see: section 30 of the Building Act), allowing councils to maintain comprehensive information about development within their jurisdiction.

#### **Compliance with the MPPS and the Building Act**

74. The Shire also has a responsibility for ensuring that where a planning permit exists, landowners comply with it. I understand that the Shire issues the most amount of planning permits in Victoria, with somewhere between 1,500 and 2,500 permits issued every year. Given the size of the Shire, the volume of permits and resourcing available, it is not possible to proactively inspect and ensure that every planning permit is being complied with.
75. As a result, the Shire's Planning Compliance Team and Building Team are responsible for investigating and responding to complaints received by the Shire related to planning compliance (and building compliance). For example, if there have been works conducted without a planning permit, and a complaint has been made, that team will investigate and may seek enforcement action via the courts or tribunals.

#### **The Shire's responsibilities with respect to certain Road**

76. The Shire is the "road authority" under the *Road Management Act 2004* (Vic) (**RMA**) for some roads within the Shire. In such instances the RMA imposes on the Shire certain responsibilities. These include, generally, to inspect, maintain and repair public roads in accordance with an applicable road management plan. The Shire as a road authority has the power to develop that road management plan. I have been provided with a copy of the Shire's **Road Management Plan**, Version 5, a copy of which is at [\[MSC.5004.0001.0091\]](#), as in force from 30 September 2022.
77. The Road Management Plan includes classification of roads within the authority's jurisdiction (arterial, collector, local access roads), hierarchy of road infrastructure assets, inspection schedules based on road classification, intervention levels that trigger maintenance actions, response timeframes for addressing identified defects, maintenance standards, hazard management systems, and record-keeping procedures.

78. It is my understanding that neither the RMA, nor the Road Management Plan imposes any specific responsibility on the Shire to prevent or manage landslips or landslides. In particular, in respect of the Road Management Plan, it is noted at 7.5 that, in respect of natural disasters and other events (such as high rain events and floods, as well as human factors), the Shire reserves the right to suspend compliance with the Road Management Plan.

#### **Asset management of the Shire**

79. The Shire has a comprehensive function responsible for overseeing the municipality's physical infrastructure and property portfolio. In carrying out this asset management, the Shire focuses on the strategic planning, maintenance, and sustainable management of community assets that typically include roads, bridges, buildings, drainage systems, parks, recreational facilities, and other public infrastructure.
80. Asset management professionals within the Shire develop and implement asset management frameworks that align with both state government requirements and local strategic objectives. They conduct regular condition assessments and maintain detailed asset registers documenting the value, condition, maintenance requirements, and lifecycle expectations of all council-owned assets. They also develop the long-term asset management plan, which forecasts maintenance needs, renewal schedules and replacement costs.
81. While asset management does not explicitly consider landslip and landslide risk necessarily, the Shire's asset management function is generally relevant to ensure the Shire's assets are maintained appropriately, and replaced when required. A copy of the Shire's 2022-2032 Asset Plan is at [\[MSC.5004.0001.0065\]](#).

#### **The Shire's process in responding to notifications of landslips and landslides**

82. In about October and November 2021, the Infrastructure Projects Team within the Shire prepared a flow chart setting out the process the Shire followed, at that time, and would follow thereafter, when the Shire was notified of a landslip or landslide. That document was prepared under the oversight of Sam Polatidis, the team leader of the Infrastructure Projects Team, which is managed by Derek Rotter. A copy of the 2021 flow chart titled "Visio-Landslip flowchart 221115" is at [\[MSC.5007.0001.1275\]](#). The 2021 flow chart was prepared to reflect the actual processes undertaken by the Shire at that time.
83. Where a landslip occurs will impact on which team within the Shire is required to respond to that landslip. As a result, in 2023 several teams worked together to develop an agreed approach to responding to landslips when notified of them. As part of that process, in about February 2023, the Infrastructure Projects Team within the Shire prepared an updated flow chart. That document was also prepared under the oversight of Sam Polatidis. A copy of a

draft of the **2023 flow chart** titled "Landslip flowchart 230222 Draft" is at [\[MSC.5004.0001.0059\]](#).

84. The teams and persons that were largely responsible for this process were Sam Polatidis, team leader of the Infrastructure Project Team (the team which generally responds to landslips when they occur inland) and Laura Crilly, team leader of the Water and Coast team (the team which generally responds to landslips when they occur in coastal areas, including those areas where the Shire is on, or is, the COM for Crown land in a coastal area).
85. The 2023 flow chart formed the basis for that process between teams of discussing and cataloguing the Shire's response process where a landslip or landslide is notified. The response process was then entered into a database used by the Shire at that time called "Nintex".
86. There are three processes recorded in Nintex: first, an "initial notification and assessment for Landslips" a copy of which is at [\[MSC.5007.0001.1268\]](#); second, where the landslip is a coastal landslip, a "Coastal Landslip Assessment" a copy of which is at [\[MSC.5007.0001.1269\]](#); and third, where a landslip is not a coastal landslip, a "Inland Landslip Assessment" a copy of which is [\[MSC.5007.0001.1272\]](#).
87. The Shire no longer uses Nintex. However, it is my understanding that the processes outlined in these Nintex flowcharts broadly align to the processes followed by the Shire presently. However, in some instances, certain functions within the flow chart have been updated.

## Question 2

For the period from 1 November 2017 to date, who in the Shire was responsible for managing the risk of landslides and landslips in the McCrae Area? For each person identified, describe their role.

88. As set out in my response to question 1, there is no one person, unit or directorate that has the role of, or the sole responsibility for, managing the risk of landslides and landslips. However, in preparing this witness statement I have caused to be prepared a table that sets out the names of, and roles of the persons who have (and have had) leadership roles with respect to planning requirements, emergency management planning, building surveyor management and infrastructure and asset management, since November 2017. As set out in my response to question 1, management of the risk of landslides and landslips is connected to each of those areas of responsibility in various ways, depending on the context. A copy of the table is at [\[MSC.5014.0001.0069\]](#).

**Question 3**

For the period from 1 November 2017 to date, identify any other entities or persons with whom the Council has worked or currently works to manage the risk of landslides and landslips in the McCrae Area. For each entity or person identified, describe the way in which the Council worked or works with that entity or person in relation to the prevention and management of landslides and landslips in the McCrae Area.

89. As set out in my answer to question 1, in relation to emergency management, as a member of the MEMPC the Shire works with each of the MEMPC members. For the development of the MEMP 2025-2028, it is my understanding that the core members of the MEMPC were Victoria Police, the Country Fire Authority, Fire Rescue Victoria, Victoria State Emergency Service, the Department of Families, Fairness and Housing, Ambulance Victoria, Australian Red Cross and Mornington Community Support Centre. The additional members were the Department of Health, Forest Fire Management Victoria (DEECA) and Focus Life Disability Services.
90. In relation to the preparation of the MEMP 2021-2024, it is my understanding that the MEMPC core members were the same as those core members for the MEMPC 2025-2028 development process, except that the relevant government department was the Department of Health and Human Services, and that there were no additional members for the MEMPC when developing the MEMP 2021-2024.
91. Separately, in response to the 2022 landslide, it is my understanding that the Shire worked with the Victorian State Emergency Service (as the control agency), Victoria Police, Public Transport Victoria, the Department of Transport, and the Department of Education and Training. In response to the 2025 landslides, it is my understanding that the Shire worked with (again) Victorian State Emergency Service (as the control agency), Victoria Police, the Department of Transport and Planning, and, in the recovery stage, the Red Cross and the Victorian Council of Churches Emergency Ministry. In the time available, I have identified these entities to the best of my knowledge. However, the Shire will continue to examine if further persons or entities were worked with in response to the 2022 and 2025 landslides.
92. Further, as set out in my answer to question 1, the Shire has worked in the past with some other independent experts. For example, while it pre-dated 2017, the Shire worked with Cardno Lane Piper Pty Ltd and Davin Slane in relation to the GIS.

**Question 9**

As at 1 November 2022, what general measures did the Shire have in place to prevent or mitigate landslides and landslips in the McCrae Area? Exhibit key documents recording these measures (e.g. policies, manuals, risk mitigation plans etc).

93. My response to question 9 is informed, to a large extent, by the matters that are set out in response to question 1. And like with that response, where I refer in this response to measures for preventing or mitigating landslides and landslips, I do so to the best of my knowledge and based on my experience. In the time available to prepare this witness statement, I have not been able to undertake an exhaustive review of all general measures potentially available to the Shire as at 1 November 2022 to prevent or mitigate landslides and landslips in the McCrae Area. As a result, it is possible that there are other measures, besides those outlined below, which may have been in place and of which I am unaware or have not been able to recall in the time available to prepare this witness statement.
94. To the best of my knowledge and understanding, as at 1 November 2022, the Shire did not have in place specific measures to prevent or mitigate landslide and landslips in the McCrae Area. However, it did have in place general measures which provided mechanisms for the prevention or mitigation of landslides and landslips. These general measures are largely set out in my response to question 1.
95. In relation to planning requirements, they were the forward-looking planning requirements under the P&E Act and the MPPS which can in some instances trigger a requirement for a planning permit. They also included, where a planning permit was required, the additional planning requirements placed on high susceptibility land, which included then (as it does now) a large number of properties in the McCrae area. However, as set out in my response to question 1, these planning requirements were preventative in the context of where a person was required to, and did, apply for a planning permit.
96. Further, and as referred to in question 1, as at 1 November 2022, the MEMP 2021-2024 version 5.0 applied. The MEMP 2021-2024 was prepared by the MEMPC, of which the Shire is a member, and was approved by the Southern Regional Emergency Management Planning Committee on 6 December 2021.
97. In terms of prevention or mitigation, the MEMP 2021-2024 version 5.0 details hazards that have been formally addressed through a Community Emergency Risk Assessment process facilitated by VICSES, but it does not set out its own preventative mechanisms for dealing with hazards. Instead, it provides details of the actions being taken about each hazard using other existing mechanisms, such as planning requirements. For example, for the Principal Emergency Risk "Storm, Severe Weather and Flash Flooding", which may encompass the

wider emergency event that leads to a landslide or landslip, section 6.5 of the MEMP 2021-2024 version 5.0 refers to land use planning overlays and building and planning regulations under the heading "what is being done".

98. Finally, the Shire (as opposed to private building surveyors), through its MBS had the powers as set out in question 1 to issue emergency orders, building notices, and building orders, albeit these are primarily reactive, providing mechanisms for responding to landslides or landslips and mitigating their impact on persons affected by their occurrence in certain circumstances.

#### **Question 11**

As at 1 November 2022, who in the Shire was responsible for identifying and acting on complaints or concerns regarding the risk of landslides and landslips in the McCrae Area?

99. Consistent with my response to question 1 and question 2, there is no one person, unit or directorate that has the role of, or the sole responsibility for, identifying and acting on complaints or concerns regarding the risk of landslides and landslips in the McCrae Area. However, as set out in my answer to question 2, in preparing this witness statement I have caused to be prepared a table that sets out the names of, and roles of the persons who have (and have had) leadership roles with respect to planning requirements, emergency management planning, building surveyor management and infrastructure and asset management, since November 2017. That table identifies date ranges within which those persons held those roles as at 1 November 2022

#### **Question 12**

For the period 1 November 2017 to 1 November 2022, set out any complaints or expressions of concern received by the Shire regarding the risk of landslides and landslips in the McCrae Area and describe any steps taken by the Shire in response to each complaint or expression of concern.

100. The Shire maintains a customer request system, which is referred to as 'Merit'.
101. The customer request system is a database that records internal and external reports, enquiries or complaints. External requests are received from members of the community and third parties (referred to as 'customers'). Internal requests are submitted by the Shire's own employees and officers, if instructed to report or escalate a matter or concern to be addressed.

102. I believe that during the time period enquired of, a customer request would be submitted into the system when a Shire employee received notice of a request, complaint or concern (usually by email to customer service, telephone, or via visiting one of the Shire's offices).
103. In answering this question, I caused searches of the Shire's customer request system to be undertaken for the period of 1 November 2017 to 1 November 2022. I respond to this question having also caused a review of those search results. A copy of a document setting out the search parameters is at [\[MSC.5009.0001.0076\]](#).
104. I am informed from those searches within the date range of 1 November 2017 to 1 November 2022, there was one customer request relevant to this question. In summary, on 17 August 2020, the owner of 27 Cook Street, McCrae reported a mudslide as a result of heavy rain, which moved topsoil. That customer request is contained in Merit Request ID 2229724, a copy of which is at [\[MSC.5012.0001.3414\]](#).
105. In the time available, I have been unable to verify whether the Shire has received any other complaint or expression of concern in relation to landslide or landslip risk in the period the subject of question 12. I have otherwise not been able to verify the steps taken in response to the 17 August 2020 customer request. However, I will continue to cause further investigations to be undertaken within the Shire to ascertain this answer if possible
106. Separately, while it did not arise in the context of the above searches, I understand that on 2 July 2018, a customer from 16 Prospect Hill Road (to the rear of 599 Point Nepean Road) called the Shire and advised of earthworks occurring in the southern corner of 599 Point Nepean Road and abutting their property. This customer interaction is recorded in Merit Request ID 1968683, a copy of which is at [\[MSC.5002.0001.4797\]](#).
107. Having made enquiries, I believe that remedial works were undertaken in 2021 to stabilise the bank and the matter was resolved privately, with relevant oversight and approval from the Shire's building and planning teams. I have formed that belief, in particular, on the basis of having reviewed an email chain commencing 27 July 2021 which refers to the instability and remedial works, a copy of which is at [\[MSC.5005.0043.4744\]](#), and also a Building Order Minor Works Order made by David Kotsiakos on 18 August 2021, a copy of which is at [\[MSC.5005.0043.4710\]](#).

### Question 13

As at 1 November 2022, was the Shire aware of any specific sites in the McCrae Area prone to landslide, landslip or other land degradation?

- 13.1 If yes, provide a table that sets out the measures the Shire put in place to prevent or mitigate landslides, landslips or other land degradation for each site. In particular, identify steps taken

to inspect, monitor and maintain the site to retain or reduce the risk of landslides and landslips.

108. As set out in my answer to question 1, it is my understanding in about 2000, the Shire commissioned the Cardno GIS Assessment. That study concluded in around 2012. That study, in effect, classified areas of the Shire into subjective zones of 'high', 'medium' and 'low' landslide susceptibility.
109. In my answer to question 1 I explain my understanding of the resulting GIS. In my answer to question 1 I also set out my understanding of the Shire's practice of having regard to the GIS in the assessment of planning permit applications, including additional planning requirements the Shire imposes when land is located in a red (high susceptibility) area in the GIS. It is my understanding that this was the general practice of the Shire as at 1 November 2022.

#### Question 18

Before November 2022, did the Shire identify or receive notice that there was or may have been a risk of a landslide or landslip occurring at the Affected Property? If so, provide details as to how the Shire identified or received notice of that risk.

110. Consistent with my answer to question 12, I have caused searches to be undertaken of the Shire's customer request system for any notice received by the Shire that there was or may have been a risk of a landslide or landslip occurring at the Affected Property.
111. I am informed that, based on those searches, no notices were received by the Shire that there was or may have been a risk of a landslide or landslip at any Affected Property.
112. To the best of my knowledge, based on the enquiries made in the time available for the purpose of preparing this witness statement, the Shire did not identify that there was or may have been a risk of a landslide or landslip at any Affected Property.

#### Question 19

Before November 2022, were any matters communicated to the Shire that indicated that there was or may have been a risk of a landslide or landslip occurring at the Affected Property? Exhibit any documents evidencing such communications.

113. I note that the location of the November 2022 Landslide is and was classified in the Piper and Slade Paper as high susceptibility land. I refer to my response to Question 1 (at paragraphs 41-42) and the image of the GIS at [\[MSC.5014.0001.0068\]](#).

114. Consistent with my answers to questions 12 and 18, I have caused searches to be undertaken for any customer requests received by the Shire that indicated that there was or may have been a risk of a landslide or landslip at the Affected Property.
115. I am informed that, based on those searches, no communications were received by the Shire that indicated there was or may have been a risk of a landslide or landslip at the Affected Properties.
116. Further, to the best of my knowledge, based on the enquiries made in the time available for the purpose of preparing this witness statement, there were no matters specifically communicated to the Shire that indicated that there was or may have been a risk of a landslide or landslip at any of the Affected Property.

**Question 20**

Describe the actions taken by the Shire in response to any communications referred to in paragraphs 18 and 19 above. Exhibit any documents recording the actions taken by the Shire.

117. I refer to my response to questions 18 and 19. As to my knowledge and understanding there were no communications or notices, there was no action to be taken by the Shire.

**Question 28**

If the Shire wishes to include any additional information in relation to the November 2022 Landslide, please set it out in the witness statement.

118. I note that the Board has requested multiple statements from the Shire. Any additional information will be set out in those statements in due course.

**Signed at HIGHETT**

in the State of Victoria

on 11 April 2025

**Irrelevant & Sensitive**

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