

BOARD OF INQUIRY INTO THE McCRAE LANDSLIDE

Mark Stoermer

Witness Statement

Prepared for the purpose of a Board of Inquiry

13 June 2025

WITNESS STATEMENT OF MARK STOERMER

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Occupation:	Chief Executive Officer, Mornington Peninsula Shire Council
Date:	13 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 address the questions in the Notice from the perspective of the CEO within the Shire.

Question 11

Look at the recommendations to authorities made by PSM in its Landslide Risk Assessment report dated 22 May 2025 (section 9.3 at p. 86-7) and:

- (a) set out the steps that the Shire proposes to take in response to those recommendations and the proposed timing of such steps;**
- (b) explain whether the Shire proposes to engage PSM to develop “landslide risk management solutions” (which PSM notes it has not been asked to do, p. 85);**
- (c) explain any barriers to the implementation of the recommendations addressed to the Shire.**

Question 11(a)

1. First, I acknowledge the Risk Report is of great significance to affected residents, the community of McCrae, the Shire and residents across wider Mornington Peninsula more generally.
2. I have had discussions and been provided with information about the implementation of the recommendations to authorities at section 9.3 (**Recommendations**) in PSM's Landslide Risk Assessment report dated 22 May 2025 (**Risk Report**). My discussions have included discussions with Derek Rotter, Director – McCrae Landslide Incident, David Simon, Acting Director – Planning and Environment and David Smith, Director – Assets and Infrastructure. Mr Rotter and Mr Simon have been more directly involved (given their roles) in planning around the Shire's response to, and implementation of, the Recommendations. Much of my knowledge is based on information provided to me by Mr Rotter and Mr Simon in my role as CEO.
3. The Recommendations require careful, coordinated and, in some cases, complex action to be undertaken by the Shire. Care is being taken by the Shire to act expeditiously in implementing those Recommendations, while also ensuring that appropriate action is taken which is decisive, targeted and minimises interference with the private rights and interests of residents and property owners as much as possible.
4. While the Shire has been able to make progress on how it will implement a number of the Recommendations, that implementation planning process is ongoing, reflective of the fact that some of the Recommendations require detailed investigation, deliberation and planning.
5. At a high level, the implementation steps the Shire is taking (at present) are:
 - (a) A peer review of the Risk Report;
 - (b) Establishment of a Project Control Group (**PCG**) to consider and work through each Recommendation; and
 - (c) Early development of an implementation plan.

Peer Review

6. I am informed by Mr Rotter that the step of having the Risk Report peer reviewed is a step the Shire would usually take for any geotechnical engineering report of significance. I am informed by Mr Rotter that the Shire has engaged EDG Australia (**EDG**) to peer review the Risk Report. EDG's peer review report is expected to be received by the Shire on 13 June 2025.

7. The Shire intends to provide EDG's peer review of the Risk Report to PSM once that peer review is received. I understand that this will give PSM an opportunity to consider EDG's peer review and enable PSM to make any updates or alterations to the Risk Report as PSM may consider necessary in light of EDG's peer review. I am informed by Mr Rotter that PSM will then provide to the Shire any updates to the Risk Report, which I understand will be by around 20 June 2025, subject to PSM's capacity. It is unknown at this stage whether EDG's peer review will impact the recommendations in the Risk Report.

Project Control Group

8. Concurrent to the peer review process, the Shire has established a Project Control Group (**PCG**) to coordinate the Shire's response to the Recommendations, and to provide strategic oversight of the implementation process. The PCG is chaired by Mr Rotter. I am a member of the PCG. The other members of the PCG are:
 - (a) David Smith (Director – Assets and Infrastructure);
 - (b) David Simon (Acting Director – Planning and Environment); and
 - (c) Emily Harkin (General Counsel).
9. The PCG is scheduled to meet fortnightly. Mr Rotter, Mr Smith and Mr Simon, with input from their respective staff members, are developing an implementation plan for the Recommendations for consideration by the PCG. The plan will track the progress made by the Shire in giving effect to each of the steps in that plan. I detail below my understanding of the current status of the implementation plan and timelines currently being developed, including work that has already been completed or which is underway, in response to the Recommendations. I note, however, that this implementation plan and timeframe is in its early stages, and is subject to change as the PCG, and the Shire's staff more broadly, evaluate and work through the Risk Report, including as a result of processing any revisions to the Risk Report that might arise as a result of the peer review process.

The implementation plan currently being developed by members of the PCG

10. I have prepared the following on the basis of advice provided to me by other members of the newly formed PCG, as I identify below, and whom are each working through various Recommendations that pertain to their own respective areas of responsibility within the Shire.

11. In respect of **considering the broader implications of the Risk Report, in particular the frequency and impact of landslide events on other dwellings of a similar age and in similar settings on the escarpment**, I am advised by Mr Rotter that the Shire plans to undertake a strategic assessment of landslide risk patterns across the full escarpment area to identify whether the landslide risk factors identified in the Risk Report in respect of the exclusion zone are also present on one or more properties outside of that area.
12. This is a significant project of work. On the basis of Mr Rotter's advice to me, this will involve a systematic evaluation of geological conditions, historical landslide frequency, building characteristics, and the adequacy of Shire infrastructure in the vicinity of the escarpment. Once this is complete the Shire will need to develop a community landslide risk information program, as well as refine its policy framework around geotechnical assessments and area studies. The work is expected to be undertaken in two phases:
 - (d) The first phase of this work, which will commence following the completion of the peer review process and receipt of any revised Risk Report, will involve information gathering and assessment of that information, including: a desktop review of existing data, an assessment of the adequacy of current planning controls, and inter-agency consultation, including engagement with relevant state agencies regarding regional landslide risk management and consultation with neighbouring councils with similar geological conditions. This phase is expected to take about 12 to 14 weeks from the receipt of any revised Risk Report after the completion of the peer review process.
 - (e) The second phase of this work will involve risk communication and policy development. This will involve the development and delivery of detailed information for the wider community, including through fact sheets on landslide risk and awareness for escarpment residents, and information on voluntary risk assessment options (which is expected to take about 3 to 4 months). It will also involve policy development identified as necessary as a result of the first phase of the work (which is expected to take about 6 to 9 months).
13. In respect of **inspecting properties with potential building breaches**, I am advised by Mr Rotter and Mr Simon that significant work has already been undertaken to inspect properties within the exclusion zone by the municipal building inspector (**MBS**)

since the McCrae Landslide on 14 January 2025. In this respect, I am advised by Mr Rotter and Mr Simon that:

- (a) For properties within the exclusion zone:
 - (i) the MBS has completed a comprehensive desktop audit of all properties within the exclusion zone, including a review of the building permits, occupancy permits and compliance history for those properties, as well as systematic physical inspections of those properties;
 - (ii) the MBS is in the process of reviewing the data gathered from these investigations to identify properties that are suspected of non-compliance or an incomplete permit history, which work is expected to take a further 12 to 14 weeks;
 - (iii) the MBS is also in the process of meeting with owners of properties within the exclusion zone to discuss the Risk Report, and issuing building notices where non-compliance with the *Building Act 1993* (Vic) (**Building Act**) or the *Building Regulations 2018* (Vic) (**Building Regulations**) is identified. This process includes providing clear timeframes for rectification works, and may involve escalating those building notices to building orders where building notices are not addressed. That process is expected to take between a further 6 and 12 months.
- (b) For properties outside of the exclusion zone, but on the escarpment:
 - (i) the MBS has commenced systematically expanding reviews and inspections to properties outside of the exclusion zone but on the escarpment, and where breaches are identified, will issue building notices and monitor compliance with those notices. That process is expected to take another 6 to 8 months.
 - (ii) the MBS has to date issued a building notice to one property within this expanded zone for identified non-compliance.

14. In respect of **reviewing existing stormwater infrastructure**, I am advised by Mr Rotter that the Shire is presently completing the first phase of this work, being data analysis and seepage investigation. In this respect:

- (a) the Shire has completed a CCTV survey of its existing stormwater infrastructure in the vicinity of: Margaret Street up to View Point Road and Prospect Hill Road, Margaret Street up to Coburn Avenue, crossing Browne Street, to Bayview Road, and also connections from Waller Place, Coburn Avenue up to Corbens Lane and Browne Street, and the unsealed section of Penny Lane. The Shire has also completed a comprehensive analysis of the findings from those surveys, including identifying structural defects within that part of the stormwater network.
 - (b) the Shire is currently in the process of identifying potential seepage points as well as correlating the findings from the CCTV surveys with flood mapping data and reported performance issues. This work is expected to take a further 10 to 14 weeks.
 - (c) the next part of the first phase of this work is a seepage point field examination. This will involve a field investigation to identify and map semi-permanent seepage points, identify unauthorised connections or modifications to approved points of discharge and review building permit records and associated documentation. This part of the work is expected to take between 8 to 12 weeks.
 - (d) the next part of the first phase of this work will involve undertaking a compliance audit of legal points of discharge. This phase of the work is expected to take between 8 to 10 weeks.
15. Following the first phase of the work being completed, a second phase will commence, which is an integrated system assessment. This involves: hydraulic modelling enhancement (which involves modelling system performance incorporating seepage inputs and structural constraints, and updating a flood risk assessment based on the actual condition of the infrastructure), which is expected to take between 10 and 12 weeks; system capacity analysis (which involves, ultimately, identifying priority areas for infrastructure upgrades), which is expected to take between 8 and 10 weeks; and a water quality and environmental assessment (which tests water quality at seepage points and discharge locations), and which is expected to take 8 to 10 weeks.
16. The third phase of the work is the strategic infrastructure management phase. This is likely to include planning for any infrastructure upgrades and maintenance, a process which is expected to take 12 to 16 weeks.

17. In respect of **assessing the adequacy of private stormwater systems including surcharged stormwater systems**, I am advised by Mr Rotter and Mr Simon that they are presently working to develop an implementation plan in respect of this Recommendation. I am also advised that the implementation plan will be affected by legal advice on the extent to which the Shire has the capacity to inspect such systems on private property and/or issue notices requiring works, including under the *Local Government Act 1989* (Vic), and that the implementation plan is therefore too early in its development to specify action items or a timeline at the time of my preparing my answer to this question.
18. In respect of the ongoing management of **Shire-managed or owned infrastructure**, I am advised by Mr Smith that the Shire will continue to operate, manage and maintain the Shire's stormwater drainage network as part its existing Asset Management Policy, Assessment Management Strategy, Stormwater Asset Management Plan and Flood and Stormwater Strategy. In preparing this witness statement I have been shown a copy of the third witness statement of Mr Smith, dated 11 June 2025. In this respect, I note Mr Smith's response to Question 6, which explains how the Shire controls, operates, manages and maintains the stormwater drainage network.
19. In respect of the **planning scheme** related Recommendations, I am advised by Mr Simon and Katanya Barlow that:
- (a) in respect of evaluating the effectiveness of existing planning controls including Planning Overlay DDO3, the Shire will undertake this work as part of the first phased of its response to the first Recommendation referred to above at [(d)]. This will involve reviewing the existing planning controls under the Mornington Peninsula Planning Scheme (**MPPS**) that apply to the escarpment for their effectiveness in light of the McCrae Landslide, including the Design and Development Overlay Schedule 3, the Environmental Significance Overlay Schedule 25, and the Vegetation Protection Overlay, Schedule 1.
 - (b) in respect of amendments to the Erosion Management Overlay (**EMO**), the Shire is presently exploring the best process to take to seek to amend the MPPS on an interim basis so that the EMO is applied to all areas of the Shire that are identified, as a result of the 2012 Cardno Assessment, as being of a high susceptibility to landslide. Concurrently, the Shire is also commencing the process to procure the updated landslide susceptibility mapping and risk assessment work required to enable the Shire to make decisions about how

the MPPS can be permanently amended to take account of that data and risk assessment. In preparing this witness statement, I have read the statement of Katanya Barlow dated 6 June 2025. I note in particular Ms Barlow's response to Question 4, which sets out the steps required to be taken by the Shire to seek an interim EMO amendment and a permanent EMO amendment, as well as the timeline for those processes.

20. In respect of the recommendation to **review planning tools intended to trigger a landside risk assessment**, I understand that recommendation will be progressed by the Shire under the leadership of Mr Simon, but the precise actions and timelines are still being developed by Mr Simon. I understand, based on advice from Mr Rotter and Mr Simon, that the Shire is presently in the process of hiring an additional officer to undertake this work, as well as progressing the interim and permanent EMO amendment process, as these processes will overlap and interact.
21. The Shire will continue to proactively take steps to implement the recommendations of the Risk Report, while awaiting the receipt of more information about the precise causes of the McCrae Landslide and the recommendations of the Board of Inquiry.

Question 11(b)

22. I am advised by Mr Rotter and Mr Simon that the Shire is presently in the process, through the MBS, of issuing building notices to certain property owners on the escarpment to require those property owners to develop risk management solutions. My understanding is that this process requires those property owners to engage appropriate specialists (such as geotechnical engineers) to design solutions to rectify and stabilise their land and structures, and then present those solutions to the MBS for his consideration and, in some instances, approval (depending on the nature of the requirements of the building notice). It then falls to the private landowner to implement such solutions.
23. As such, I am advised by Mr Rotter the "landslide risk management solutions" referred to by PSM at page 85 of the Risk Report, and which PSM notes is "outside the scope of this report", is outside of the scope of the Risk Report because the design and implementation of these solutions falls to private property owners, not the Shire. As such, the Shire does not presently plan to engage PSM to develop "landslide risk management solutions" for private properties.

24. Further, I am advised by Mr Rotter and Mr Simon that while the MBS can direct a landowner to undertake some landslide risk management solution works through existing powers under the Building Act, these powers are not at large, and do not relate to land in general but must be connected with a structure. In this respect, I draw the Board of Inquiry's attention to the witness statement of Mr Bulent Oz of 11 April 2025 at [62]-[66], and to the recent decision of the Building Appeals Board of Victoria, BAB Case no. 455878, between Gerard Borghesi and Bronwyn Borghesi and the Municipal Building Surveyor for the Shire of Mornington Peninsula, handed down on 30 April 2025. I understand that this decision has previously been provided to the Board of Inquiry by the solicitors for the Shire.

Question 11(c)

25. While the Shire is committed to implementing the Recommendations of the Risk Report (subject to any changes required to the Risk Report as a result of the peer review process, as well as PSM's eventual causation report, and the eventual report of the Board of Inquiry), in my opinion, based on my discussions with Mr Rotter and Mr Simon for the purpose of preparing this statement, and my professional experience, there are a number of barriers which potentially stand in the way of this objective.
26. In general, at present, the Shire is unlikely to have the human and financial resources for, at least, the swift implementation of all of the Recommendations. As noted above, the implementation of some of the Recommendations in the Risk Report require detailed investigation, deliberation and planning, and the execution of multiple steps. The execution of such tasks takes the Shire's limited human resources away from its already significant ordinary workload, and also requires substantial expenditure from the Shire's budget, including on external consultants and expert reports. That being said, as the CEO I will have to re-prioritise resources and workloads to accommodate the provision of resources to address the Recommendations. With limited budgets in a rate capping environment, there may be a risk that other Council projects are delayed.
27. It is also my belief that there are a number of barriers to the introduction of an interim EMO amendment for all high susceptibility landslide areas within the Shire, and/or making a permanent amendment to the MPPS to include properties not presently subject to the EMO, on the basis of updated landslide susceptibility data and risk analysis. I have formed this belief on the basis of my review of a copy of the witness statement Katanya Barlow dated 6 June 2025. I note Ms Barlow's answer to Question

4. In particular, she notes a range of barriers to the implementation of an interim EMO amendment at [54]-[59] and a permanent EMO amendment at [63]-[65].

28. Nevertheless, the Shire is progressing its plan to implement the Recommendations in the Risk Report within its budgetary and resource constraints, and will continue to prioritise this essential work.

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Signed by Mark Stoermer