

BOARD OF INQUIRY INTO THE McCRAE LANDSLIDE

David Simon

Third Witness Statement

Prepared for the purpose of a Board of Inquiry

7 May 2025

THIRD WITNESS STATEMENT OF DAVID SIMON

Name: David Simon
Address: 2 Queen Street, Mornington
Occupation: Acting Director Planning and Environment
Date: 7 May 2025

1. I have previously provided witness statements dated 11 April 2025 (**My First Statement**) and 17 April 2025 (**My Second Statement**).
2. I make this third witness statement in further response to the Second Request to Produce a Witness Statement dated 4 April 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 Council. I have also used and relied upon data and information produced or provided to me by officers within the Shire.

Response to Questions

4. This statement responds to question 18 in the Notice.

Question 18

Describe the steps the Shire took in response to the 5 January 2025 Landslide and McCrae Landslide. In particular, but without limiting the foregoing, identify:

- 18.1 when and how the Shire first became aware of the 5 January 2025 Landslide and McCrae Landslide;
- 18.2 on first becoming aware of it, how the Shire immediately responded;
- 18.3 the agencies, authorities, entities, expert or any other persons with whom the Shire worked to respond to the 5 January 2025 Landslide and McCrae Landslide; and
- 18.4 any investigations undertaken or commissioned by the Shire to identify the cause(s) of the 5 January 2025 Landslide and McCrae Landslide, including the outcomes of such investigations.

Exhibit key documents demonstrating these steps (e.g. examples of communications sent to residents impacted by the 5 January 2025 Landslide and McCrae Landslide, letters of instruction to geotechnical engineers, etc.).

5. At paragraphs [146]-[155] of my second statement, I provided a response to question 18.4 of the Second Request to Produce a Witness Statement dated 4 April 2025 (**Notice**). Below is a response to the balance of question 18 of the Notice.

Response to the 5 January 2025 Landslide

6. I do not have direct knowledge of the 5 January 2025 Landslide and the response of the Shire. However, I have caused enquiries to be made for the purposes of responding to this question. I am informed that:
- (a) the Shire was first made aware of the 5 January 2025 Landslide on the evening of 5 January 2025. At approximately 8:20pm, Mr Brett Fletcher, Emergency Management Coordinator who is delegated the role of the Shire's Municipal Emergency Management Officer (**MEMO**), received a telephone call from Mr Mark Daw, Unit Controller (Sorrento) of the Victorian State Emergency Service (**VICSES**), advising him of the 5 January 2025 Landslide;
 - (b) immediately following the call from the VICSES, the MEMO telephoned the Shire's Manager of Community Safety, Health and Compliance, Mr Dale Gilliatte;
 - (c) at approximately 9:09pm, the MEMO received a further telephone call from Mr Daw of the VICSES requesting that the Municipal Building Surveyor (**MBS**) contact him and attend site; and
 - (d) the MEMO then telephoned the Municipal Building Surveyor, Mr Matt Glover, at approximately 9:15pm.
7. The VICSES, as the control agency, was primarily responsible for managing the response to the 5 January 2025 Landslide. I am informed that the VICSES did not, on 5 January 2025 or after, request assistance from the Shire in the form of the supply of resources. Resources in this context refers to the physical equipment and assets needed to undertake emergency management activities (in accordance with the State Emergency Management Plan (**SEMP**)), including the supply of plant and/or equipment. I am also informed that there were no displaced residents requiring temporary accommodation as a result of the 5 January 2025 Landslide. As a consequence, there was no activation of the response activities of the Shire's Emergency Management team in response to the 5 January 2025 Landslide.

8. Based on the records set out below, the Shire deployed the MBS to site on 5 January 2025 as requested by the VICSES.
9. The MBS Significant Incident Notification, prepared by Mr Glover (MBS), dated 7 January 2025 **[MSC.5003.0001.7156]** records the actions taken by the MBS immediately upon being informed of the 5 January 2025 Landslide. Relevantly, the MBS Significant Incident Notification **[MSC.5003.0001.7156]** records:
 - (a) the MBS telephoned the VICSES, as the controlling agency, and deployed a building surveyor at 9:20pm to attend the site;
 - (b) the MBS attended the site that evening to conduct an initial safety inspection with other team members;
 - (c) on 6 January 2025, a follow up inspection at the site was conducted with the MBS. This inspection was also attended Mr Pope of PSM (as discussed below).
10. Following the 5 January 2025 Landslide, the Shire (via the MBS) engaged a geotechnical engineer, PSM, to provide an assessment of the site. An email from Mr Pope of PSM to Matt Glover (MBS) dated 7 January 2025 records that Mr Pope attended the site on 6 January 2025 **[MSC.5003.0001.7180]**. In that email, Mr Pope provided a preliminary risk assessment and risk to life assessment in respect of the 2025 Affected Properties and the 2025 Other Property and recommended certain actions. I refer in this regard to paragraph 147 of my second statement.
11. The MBS Significant Incident Notification dated 7 January 2025 **[MSC.5003.0001.7156]** records that control of the area the subject of the 5 January 2025 Landslide was handed over to the MBS from VICSES on 6 January 2025 at around 2:30pm.
12. By way of overview of the other actions taken by the Shire in response to the 5 January 2025 Landslide, I understand based on the records referred to below and enquiries I have made, the Shire (via the MBS):
 - (a) worked with South East Water to investigate a possible storm water concern or other leak. The MBS Significant Incident Notification dated 7 January 2025 **[MSC.5003.0001.7156]** records there was flow of water from '1-12 View Point' Road. I understand this to be a reference to '10-12 View Point Road';
 - (b) undertook or caused to be undertaken its own water testing, including water tracing, water meter inspections and sampling. This is recorded in part in the MBS Significant Incident Notification dated 7 January 2025 **[MSC.5003.0001.7156]**;

- (c) inspected site conditions of the 5 January 2025 Landslide daily during the working week;
 - (d) investigated building works carried out on the 2025 Affected Property or Properties;
 - (e) liaised with residents and insurers concerning recommended short-term works; and
 - (f) worked with and supported Mr Pope with his investigations into the cause of the 5 January 2025 Landslide.
13. It is my understanding (based on the information available to me) that the Shire worked primarily with the following agencies, consultants and persons in response to the 5 January 2025 Landslide:
- (a) the VICSES;
 - (b) geotechnical engineer, Mr Pope of PSM;
 - (c) South East Water; and
 - (d) the residents of the 2025 Affected Properties.

Response to the McCrae Landslide

14. I do not have direct knowledge of the McCrae Landslide and the response of the Shire. However, I have caused enquiries to be made for the purposes of responding to this question. Below I provide an overview of the Shire's response to the McCrae Landslide.
15. Based on my enquiries and the records set out below, it is my understanding that the Shire first became aware of the McCrae Landslide on 14 January 2025 when the landslide occurred. The Shire became aware of the McCrae Landslide when it occurred because at the time of the incident the MBS, Mr Glover, was at 3 Penny Lane McCrae. Shortly after the McCrae Landslide, an assistant building surveyor, Ms Maharlia Pakoti, arrived at the site.
16. The incident report of Ms Pakoti dated 14 January 2025 [MSC.5003.0001.7421] records the events immediately following the McCrae Landslide, including some of the actions taken by the Shire to notify the appropriate people within the Shire of the incident. Relevantly, the incident report records:
- (a) Mr Glover and Ms Pakoti were attending the site to conduct a follow up inspection following the 5 January 2025 Landslide;

- (b) Ms Pakoti arrived at the site at approximately 8:50am. She noticed a number of public onlookers looking down Penny Lane and assumed they were looking at the 5 January 2025 Landslide. A member of the public called out to her saying "there is a gentleman down the lane". She walked down Penny Lane to 2 Penny Lane and saw Mr Glover lying on the driveway of 2 Penny Lane injured. He had some blood on his head, arm and hand. Ms Pakoti then turned saw that the house at 3 Penny Lane had collapsed. Ms Pakoti rendered assistance to Mr Glover until an ambulance arrived;
- (c) during this time, Ms Pakoti contacted Mr Rory MacDonald, Acting Manager – Development Services, and reported the incident. A request was made that Mr Pope of PSM be contacted;
- (d) Ms Pakoti also reported the incident to the Emergency Management Co-ordinator, Mr Fletcher, and the Principal Building Surveyor, Mr Claudio Flores, in separate telephone calls;
- (e) Mr Flores and the Deputy Municipal Building Surveyor, Mr Jack Divers, were deployed to the site;
- (f) Victoria Police, VICSES and the CFA arrived at the site and closed off the area. Ms Pakoti co-ordinated with Victoria Police, VICSES and the CFA until Mr Flores arrived at the site.

Emergency Response

- 17. The VICSES, as the control agency, was primarily responsible for managing the response to the McCrae Landslide. The Shire's role was to support the VICSES with resources as requested and assist with the flow of information.
- 18. I am informed that Shire's Emergency Management team, including Mr Andrew Brick (Team Leader) and Mr Dale Gilliatte (Manager of Community Safety, Health and Compliance), co-ordinated shortly after being informed of the incident. The Shire's Emergency Management Team was subsequently activated in response to the McCrae Landslide.
- 19. I am informed that Mr Brick took a file note on 14 January 2025 of his actions on that day, a copy of which is at [MSC.5019.0001.3389]. Based on Mr Brick's notes and information provided to me, I understand the Shire's emergency response involved the following immediate actions:
 - (a) at 10:39am, a verbal briefing of the Emergency Team was conducted. Two main actions were identified and allocated to team members – (i) make contact with the residents and confirm they have places to go and (ii) establish a relief hub;

- (b) at 11:30am, Mr Brick arrived at the site of the McCrae Landslide and co-ordinated with the temporary Incident Controller of the VICSES, and sought to establish what was occurring and what was required from the Shire;
 - (c) on site, Mr Brick co-ordinated with Victoria Police and the Incident Controller of the VICSES (and other authorities) concerning (among other things): road closures; water shut off; the exclusion zone; and community briefing.
- 20. I am informed that the Emergency Management team contacted affected residents by telephone throughout 14 January 2025, and co-ordinated on issues affecting residents including water, gas and electricity shut offs, and investigations into the incident.
- 21. To facilitate decision making and keep across developments, Crisis Management Work Group meetings were held daily on and from 15 January 2025. These meetings were attended by members of the Shire's Executive Team, and Mr Gilliatte, Mr MacDonald and/or Mr Brick. I am informed that copies of the records of these meetings have been provided to the Board of Inquiry, subject to claims for legal professional privilege. A copy of the meeting record from the meeting on 15 January 2025 is [MSC.5003.0001.7469].

Communicating with residents and community

- 22. A key priority of the Shire immediately following the McCrae Landslide was to provide emergency services to affected residents and information to the broader community. I am informed that to achieve this, the Shire undertook the following:
 - (a) on 14 January 2025, the Shire established a community relief hub in Dromana. The community relief hub was open over a series of days following the incident;
 - (b) on 14 January 2025, information concerning the McCrae Landslide was published on the Shire's website for members of the public to access. The website was thereafter periodically updated thereafter and provided information to the community relating to the actions taken by the Shire, including pertinent comments by the Mayor and Acting CEO;
 - (c) dedicated McCrae Recovery and MBS email address was established to provide a single point for communication between affected residents and the Shire on those topics. Notably:
 - (i) residents were supplied with email updates of information relating to the landslide between 23 January 2025 and 18 February 2025. Please refer to documents under sub-heading 'Correspondence with residents' in the below index;

- (ii) a weekly 'newsletter' has been distributed to residents since 18 February 2025. I understand copies of some relevant documents have been provided to the Board of Inquiry including [MSC.5003.0002.3468], [MSC.5003.0002.3815], [MSC.5003.0002.3828], [MSC.5003.0002.3830], [MSC.5003.0002.3835], [MSC.5013.0001.0001], and [MSC.5020.0001.0451]. Please refer to further documents under sub-heading 'Weekly newsletters' in the below index.
 - (d) on 15 January 2025, the Shire held a Community Meeting at the Dromana Community Hall. This meeting was attended by representatives of a number of responsible authorities including the Shire, South East Water, Emergency Recovery Victoria and Victoria Police. Mr Pope of PSM also attended. I understand a copy of the minutes of this Community Meeting has been provided to the Board of Inquiry.
- 23. On 22 January 2025, the Shire held a second Community Meeting at the Dromana Community Hall. I understand a copy of the minutes of this Community Meeting has been provided to the Board of Inquiry.
 - 24. The Shire also had a number of recovery meetings with certain affected residents, which were held at the Shire's office in Mornington on 31 January 2025, 7 February 2025, and 14 February 2025. I understand copies of the minutes of those meetings have been provided to the Board of Inquiry;

Building Surveying

- 25. As set out above, the building surveying team were immediately deployed to the site following the McCrae Landslide.
- 26. I am informed that the Principal Building Surveyor, Mr Flores, and the Deputy MBS, Mr Divers started giving consideration to the emergency orders needed to be issued to prohibit occupation of the properties within the exclusion zone established by VICSES.
- 27. Mr Pope attended the site on 15 January 2025 with Mr Flores. I have been shown an email dated 15 January 2025 from Mr Pope prior to the site visit, which records Mr Pope's recommendations as to certain investigations to be undertaken [MSC.5003.0001.7420]. I am informed that Mr Pope worked directly with Mr Flores thereafter.
- 28. Mr Flores and the building surveying team worked with Mr Pope to assess the site and undertake a preliminary risk assessment, and obtain Mr Pope's advice in respect of the exclusion zone. Slope monitoring was established so that safe access to the area could be established.

29. The McCrae Landslide Summary of Events prepared by Mr Flores **[MSC.5003.0002.2780]** records a number of actions of the building surveying team taken in response to the McCrae Landslide in the period from 14 January 2025 and 28 January 2025. By way of overview, this included:

- (a) giving consideration to the appropriate exclusion zone;
- (b) serving emergency orders, including with the assistance of Victoria Police;
- (c) working with Mr Pope;
- (d) giving consideration to how and when to provide brief entry to residents in the exclusion zone to collect any essential belongings and clear perishables;
- (e) working with the Shire's infrastructure team concerning water damage to roads;
- (f) speaking to residents.

Asset Management

30. I am informed that the Shire's Manager of Infrastructure Projects, Mr Rotter, attended the site on 14 January 2025 to conduct an inspection of the drainage system. The Shire then took steps to undertake further investigations to determine the condition of the drainage network and the source of the water present at the McCrae Landslide. The email chain dated 14 January 2025 between Mr Luke Jackson, Team Leader of Roads and Drainage at the Shire, the Principal Building Surveyor, and Mr Rotter records the investigations that the Shire proposed be undertaken **[MSC.5003.0001.7405]**. I understand that the Shire engaged Fulton Hogan to install CCTV to determine the condition of the drainage network.

Authorities, agencies, etc

31. It is my understanding (based on the information available to me) that the Shire worked primarily with the following agencies, consultants and persons:

- (a) the VICSES;
- (b) Victoria Police;
- (c) geotechnical engineer, Mr Pope of PSM (concerning investigations);
- (d) South East Water (concerning water supply and investigations);
- (e) VicRoads;
- (f) Victorian Building Authority – State Building Surveyor;

- (g) the residents; and
- (h) the Department of Transport and Planning (concerning road closures).

Personal Information

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Signed by David Simon

on 7 May 2025

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