

**Board of Inquiry into the McCrae landslide**

**Before: The Chairperson,  
Ms Renée Enbom KC**

**County Court of Victoria,  
250 William Street, Melbourne, Victoria**

**Thursday, 15 May 2025 at 4.13pm**

**(Day 6)**

**Mr M. Costello KC with Mr A. Di Stefano and  
Ms A. Kittikhoun appeared as Counsel Assisting.**

**Ms K. Evans KC with Ms E. Pepler and Mr C. McDermott  
appeared on behalf of the State of Victoria.**

**Ms K. Foley SC with Ms E. Bateman, Mr C. Viney and  
Dr W. Phillips appeared on behalf of the Mornington  
Peninsula Shire Council.**

**Ms D. Siemensma appeared on behalf of South East Water  
Corporation.**

1 CHAIRPERSON: Mr Costello, can I apologise to everyone for  
2 the extremely long delay today. The day developed in a way  
3 that was completely unexpected and beyond my control.

4  
5 MR COSTELLO: I've lived that experience before, Madam  
6 Chair, so no adverse comment on my part. Continuing with  
7 Mr Borghesi.

8  
9 CHAIRPERSON: Yes.

10  
11 <GERRARD RAYMOND BORGHESI, recalled:

12  
13 <EXAMINED BY MR COSTELLO:

14  
15 MR COSTELLO: Thank you, Mr Borghesi. Mr Borghesi, when  
16 we rose yesterday we had been talking about the 2023  
17 stormwater works and we had gone through what I might  
18 describe as the voids issue, the identification of them by  
19 the ground penetration radar, the identification of a  
20 particular void by reason of the roadworks going on, and we  
21 saw the video of the void?

22 A. Yes.

23  
24 Q. I didn't want to ask you any other questions in  
25 connection with that topic and was intending to move to  
26 another topic. But, just to be clear, am I right that it's  
27 your evidence that after the 2023 stormwater works were  
28 conducted by the council the area the subject of the 2022  
29 landslides was considerably more dry than it had previously  
30 been?

31 A. That is correct. If I may add a little to that?

32  
33 Q. Yes, please.

34 A. That area dried out over a period of between maybe  
35 three to six months because of perhaps the amount of water  
36 that was in the hillside; it didn't just dry out instantly.  
37 It progressively dried out to today it's completely dry.

38  
39 Q. All right. Thank you. The last topic I want to touch  
40 upon before we move to 2025 concerns rectification works in  
41 relation to the 2022 landslides.

42 A. Okay.

43  
44 Q. Is it the case that there have not been any  
45 rectification works done to that land since the landslide  
46 occurred?

47 A. That is correct.

1  
2 Q. All right. And is it the case that you and the  
3 council are in dispute as to the extent of any  
4 rectification works that need to be conducted?  
5 A. No, I would not say that.  
6  
7 Q. All right. Is it true that you and the council are in  
8 dispute as to who ought conduct rectification works?  
9 A. Yes.  
10  
11 Q. Is your evidence that there is agreement between you  
12 and the council as to the nature of the works that ought be  
13 carried out?  
14 A. I would characterise it as very close to final  
15 agreement.  
16  
17 Q. I see.  
18 A. Subject to perhaps another iteration on detail.  
19  
20 Q. All right. Well, let me cut to the chase. When I was  
21 examining Mr Pope there was a discussion about a proposal  
22 that involved in effect terracing part of the land where  
23 the 2022 landslide was and the erection of I think four  
24 retaining walls, and that was contrasted with the plan that  
25 Mr Pope had developed that involved the use of soil nails  
26 and mesh?  
27 A. Correct.  
28  
29 Q. Do you recall me having that conversation?  
30 A. Yes, I do.  
31  
32 Q. All right. Is it the case that there's no longer a  
33 dispute between you and the council as to the method of the  
34 work?  
35 A. I would say not so much dispute but more finalisation  
36 of a final solution that would be lowest cost to whoever  
37 ends up paying for it.  
38  
39 Q. And does the solution involve one of those two options  
40 or is there a new solution that's been developed?  
41 A. There were two other solutions being developed beyond  
42 the two you mentioned.  
43  
44 Q. What were they?  
45 A. One was what I would describe as surficial works, so  
46 surficial meaning on the surface of the hillside where the  
47 2022 landslide was, with lighter, less expensive, less

1 invasive retaining walls to stop what are called  
2 translational mudslides. And the other option that was  
3 being considered was a Geobrigg retaining barrier like what  
4 we see around the F1 circuit to capture errant F1  
5 vehicles --

6

7 Q. Sorry, what was the word you used before you said  
8 retaining barrier? A Geo?

9 A. Geobrigg.

10

11 Q. Brigg?

12

13 A. It's a commercial name for a type of tension barrier  
14 similar to what you might have on the side of a highway to  
15 capture an errant vehicle. There was a discussion around  
16 that being a potential solution on Penny Lane so that in  
17 the event there was a landslide that barrier would restrain  
18 the soil and protect the inhabitants of the houses on  
19 Penny Lane. And there's a third option, which is in play,  
20 which is I think commensurate to the concept of the soldier  
21 piles that we heard about in prior evidence, which is  
22 essentially a heavy retaining wall on the back boundary of  
23 the Willigenburgs' property and those other properties.  
24 That doesn't act as a tension restraint. It's more a heavy  
25 wall that would stop the flow of a landslide getting into  
26 the backyard.

26

27 So those options that I've described, if I may, I'd  
28 say the Geobrigg option tension barrier has been dismissed  
29 because it requires cables to go across Penny Lane, which  
30 would prohibit access for people going along Penny Lane.  
31 But the other two options, the lighter surficial retaining  
32 walls and the soldier pile concept on the rear fences of  
33 the properties on Penny Lane, are still very much in play,  
34 and we're very happy to continue to talk to council about  
35 those options.

36

37 Q. So you and council have been having discussions about  
38 those options?

39

A. We've had one discussion.

40

41 Q. And those discussions are intended to continue, are  
42 they?

43

A. We would very much like them to continue.

44

45 Q. All right. And it's right, is it, that you're still  
46 involved in litigation with the council in connection with  
47 losses that you sustained in the 2022 landslide?

1 A. Correct.

2

3 Q. And those proceedings remain on foot in the VCAT?

4 A. They do.

5

6 Q. All right. And are there extant proceedings on foot  
7 in the Building Appeals Board as well?

8 A. The Building Appeals Board has been heard. We're  
9 still waiting on the final ruling to come out in the next  
10 day or two.

11

12 Q. I see. Mr Borghesi, I was going to move to 2025 now,  
13 but before I do that I just wanted to make sure that  
14 there's nothing in connection with the 2022 landslides that  
15 you wanted to convey to the chair that you haven't had an  
16 opportunity to convey by reason of my questions?

17 A. I have to think how to phrase it correctly, but  
18 I would like Madam Chair to understand that the - to fully  
19 understand that the remediation works that the council  
20 completed in May 2023 by virtue of putting in a new  
21 stormwater drain and replacing the kerbs were in reaction  
22 to, I would suggest, the 2022 landslide. So the issue  
23 we've always had is why were those works completed at that  
24 time.

25

26 Q. Thank you, Mr Borghesi. Can we move to 2025?

27 A. Yes, sir.

28

29 Q. In your statement commencing at about paragraph 30 you  
30 make some comments about movement in the earth on the  
31 property. This is underneath the heading "Chronology of  
32 relevant critical events between 1 January 2025 and  
33 22 April 2025"?

34 A. Okay.

35

36 Q. And you say in paragraph 30, "In the eastern gully  
37 area and prior to January 5 there was approximately 150mm  
38 of soil settlement behind the east end of the reinforcement  
39 wall. There was no sign of water in this area, nor down  
40 the eastern gully area"?

41 A. Correct.

42

43 Q. So that's prior to 5 January, and you then say, "On  
44 5 January there was a substantial movement of earth"?

45 A. (Witness nods).

46

47 Q. In fact I might call this paragraph up, in fairness to

1 you. It's RES.0001.0003.0002. And if we could go to  
2 page 6 of that and expand on the screen paragraphs 31 and  
3 32, please. So you say there, "On 5 January there was a  
4 substantial movement of earth starting approximately 6m  
5 below the ground level of the vegetable patch, when the  
6 landslide occurred. This landslide exposed a substantial  
7 flow of subterranean water emanating from the hillside at  
8 this level," and we'll go to the photograph in a minute.  
9 And then, "Between 5 and 14 January the soil continued to  
10 erode in the eastern gully area as the head scarp continued  
11 to fail due to the continuous flow of water, threatening a  
12 large gum tree in the gully as well as the reinforcement  
13 wall's foundations." Could we go to GB-14 now, which is  
14 RES.0001.0003.0001, and it's at page 45. This is the  
15 photograph that you refer to in that part of your witness  
16 statement, Mr Borghesi?

17 A. It is.

18  
19 Q. And could you just explain to the chair what we're  
20 looking at here?

21 A. We're standing on the veggie patch looking due north.  
22 In the top of that photograph you can see the roof which  
23 was number 3 Penny Lane. So if you were to lift your head  
24 up you would see the ocean in front of you, so we're  
25 looking due north. What you can see here is the vegetation  
26 that exists towards the base of the veggie patch. At the  
27 very bottom of this photograph if you were to look straight  
28 down you'd be looking straight down that retaining wall.  
29 So a substantial amount of soil and vegetation there. You  
30 can see a gum tree on the right there. And then what  
31 I would describe is quite a long way down the gully, the  
32 best way to describe that would be approximately six metres  
33 vertical drop from where my feet are, so the level of  
34 the veggie patch, and perhaps 10 to 12 metres further north  
35 is where that water is emanating. However, there were  
36 signs that - where that water is heavy there are signs that  
37 the water - some of that water was actually emanating from  
38 the scarp perhaps another metre or two back towards me.

39  
40 But this is the site after the January 5 landslide,  
41 and then what we're trying - what we were trying to convey  
42 in my witness statement is the head scarp, which is  
43 basically in the dead centre of this photograph where you  
44 can see the agapanthus and where that gum tree is off to  
45 the right, was continuing to erode as the water beneath  
46 that dirt and the agapanthus was liquefying the soil and  
47 washing it down the gully.

1  
2 So we were watching that slow degradation on a daily  
3 basis. We were living in the house between 5 January and  
4 14 January. We hadn't been evacuated at that point. So  
5 naturally this is the only thing that matters in our lives.  
6 We're watching it, you know, 12 to 16 hours a day, and  
7 watching that head scarp come up towards the retaining  
8 wall.

9  
10 Q. You refer to a video that you've provided to the board  
11 of inquiry in that paragraph. Would you like me to play  
12 that video?

13 A. I would.

14  
15 Q. Could I please have RES.0001.0004.0189. I hope this  
16 is the right one, Mr Borghesi, but you'll tell me.

17 A. If it plays I'll be able to tell you, but I'm not sure  
18 this is the right one. Well, this is - okay, this is just  
19 a video taken from the same spot where the photograph was  
20 taken.

21  
22 Q. Yes.

23 A. This is useful. You can see there's water emanating  
24 there, and then goes towards that broader patch of wetness  
25 that we saw on the still photograph, which is about there.  
26 Yes.

27  
28 Q. And the water in that shot, how high up the hill is it  
29 coming out? It's coming out of the hill at some level.  
30 How high up is it?

31 A. We estimated six metres below the ground level of the  
32 veggie patch.

33  
34 Q. Yes. Thank you.

35 A. If I may add, difficult to measure.

36  
37 Q. Yes. Yes, of course.

38 A. So it could have been four. It could have been five.  
39 But our best estimate is six metres.

40  
41 Q. Madam Chair, that is not an exhibit to Mr Borghesi's  
42 statement, so I'll tender that video.

43  
44 CHAIRPERSON: Yes. The video is exhibit CA23.

45  
46 **EXHIBIT #CA23 VIDEO RES.0001.0004.0189**  
47

1 MR COSTELLO: Thank you. You then, Mr Borghesi, make some  
2 statements regarding excess moisture on the property. You  
3 begin by noting that there was very little rainfall in the  
4 McCrae area in December up to 14 January and that the  
5 ground was dry throughout the property. You then estimate  
6 the subterranean flow of water after the 5 January  
7 landslide to be between 10 and 15 litres a minute?

8 A. Correct.

9  
10 Q. That's the flow that we were just looking at there?

11 A. Correct.

12  
13 Q. And how did you come to that estimate?

14 A. Through discussions with other people who were looking  
15 at it and perhaps had more familiarity of how to sort of  
16 estimate water flow.

17  
18 Q. I see.

19 A. And, secondly, the water flow that was flowing down  
20 View Point Road in the cracked kerb, which we estimated to  
21 be about 10 litres a minute continuously, I had previously  
22 tried to capture some of that in a two-litre milk  
23 container, not particularly successfully, but I had a good  
24 idea of what 10 litres a minute looked like from that  
25 exercise, and it was pretty evident to me that the water  
26 flow we were seeing here was the same or perhaps a little  
27 bit more.

28  
29 Q. I see. Thank you. It's at this point in your witness  
30 statement that you make reference to an exhibit, which is  
31 GB-15. Can I have it on the screen, please. It's  
32 RES.0001.0003.0001. It's page 46. It's the document we  
33 were just at but the next page. Now, Mr Borghesi, although  
34 the colour's not necessarily readily apparent here, in your  
35 witness statement you make reference to green dye?

36 A. Correct.

37  
38 Q. Which is said to be shown by this photograph. Could  
39 you just explain the circumstances by which the dye came to  
40 be used and what the chair should take from this  
41 photograph?

42 A. To the best of my knowledge, council representatives  
43 or their geotech had put green dye material in a borehole  
44 on the View Point Road nature strip. I did not witness  
45 that occurring, but I was told that's what had happened.  
46 I believe Dane Pope may have done that or, if not, if it  
47 wasn't Dane, it was certainly a council representative.



1 And that green dye was inserted on the nature strip of View  
2 Point Road in an attempt to identify the subterranean  
3 pathway by which water could come from View Point Road down  
4 to the head scarp here, and so what we see here is very,  
5 very clear evidence of the green dye emanating from the  
6 scarp in about the area that I was describing down from the  
7 veggie patch approximately six metres, was our best  
8 estimate. If you would like me to point to that?

9  
10 Q. Yes, if you wouldn't mind.

11 A. So just for clarity, so we're looking south here up  
12 towards our property. This is 6 View Point Road here. The  
13 boundary line is right on that piece of wood. So this is  
14 the boundary between our properties.

15  
16 Q. Yes. You just anticipated my next question, which was  
17 the boundary line.

18 A. Oh, excuse me.

19  
20 Q. No, not at all. But just to be clear - sometimes with  
21 photographs angles can make things difficult, but do you  
22 think that if you extend the boundary line from where you  
23 just indicated down about the middle of the photograph  
24 would that be a roughly accurate representation of  
25 the boundary line here?

26 A. I would say not quite. The best way to imagine where  
27 the boundary line goes is to look at the wall here and the  
28 direction the wall's pointing. So if you were standing  
29 here and you projected on that same angle it would probably  
30 come more --

31  
32 Q. I see.

33 A. -- towards where this tree is --

34  
35 Q. Yes.

36 A. -- just because of that angle. But, for the purposes  
37 of making the point, on the head scarp here I'd say the  
38 boundary is - well, actually, it's exactly on that line on  
39 the head scarp because it's coming across and then down,  
40 which points to the soil loss on 6 View Point Road, and  
41 then I think this way is on my property and my wife's  
42 property. And here is the green dye emanating here, and  
43 the level of the veggie patch is - in fact, you can see a  
44 planter box in the veggie patch up here. So we estimated  
45 that drop to be six metres.

46  
47 Q. Thank you. Before I come to the 14 January landslide

1 I just want to ask you some questions about your  
2 communications with the council in the period between the  
3 5 January landslide and the 14 January landslide?

4 A. Yes.

5

6 Q. Were you in contact at any point with the council  
7 after the 5 January landslide?

8 A. Yes, continuously.

9

10 Q. Were you in contact with a particular officer of  
11 the council or were you speaking to different people at  
12 different times?

13 A. Different people at different times. Predominantly  
14 Matt Glover.

15

16 Q. Who was the MBS?

17 A. Yes, the delegated MBS.

18

19 Q. Did you speak to any of the elected representatives at  
20 the council or were your dealings with the employed staff  
21 of the council?

22 A. Employed staff of the council.

23

24 Q. Thank you. And, without going into each  
25 communication, immediately after the 5 January landslide  
26 what were those communications about?

27 A. So, if I may, on 6 January - can I look at my notes  
28 here?

29

30 Q. Yes.

31 A. On 6 January I communicated by text message to Claudio  
32 Flores that we clearly had a bigger issue here than the  
33 issues that were just surrounding the 22 landslide, and  
34 I spoke to Matt Glover as well, so council people - and  
35 I think there was Jimmy Jones as well. So on 6 January  
36 Claudio Flores, Matt Glover and Jimmy Jones. In addition  
37 to that we had SES people on site. But, in terms of  
38 responsive to your question, the council people we spoke to  
39 on the 6th were those three. On the - do you want me to go  
40 on to other days?

41

42 Q. Yes, please.

43 A. So on 7 January we had a number of South East Water  
44 people present. We also had Claudio and Jimmy from council  
45 present, and they were putting dye in drains at that point  
46 in time, and we discussed the concept of drilling boreholes  
47 or what John Bolch described as spears in View Point Road

1 to extract water before that water emanated from the scarp,  
2 because we were all terribly concerned that, if we weren't  
3 capturing that water and redirecting it, this head scarp  
4 would continue to fail and lead to something disastrous.

5  
6 8 January we had South East Water on site. They were  
7 taking water samples. And I informed Claudio Flores of  
8 increased water flow. So this 10 to 15 litres a minute we  
9 were estimating was fluctuating a little bit. It would  
10 sometimes abate and then it would increase. So I told him  
11 it was increasing.

12  
13 9 January we had Matt Glover, Jimmy Jones and two of  
14 the students we've heard about previously attend the site  
15 from council. They gave us an action report to consider  
16 for interim works to stop further degradation of  
17 the hillside.

18  
19 On 10 January we had Matt Glover there to inspect the  
20 property. Notably over the weekend 11 and 12 January  
21 just - we tried to contact council but there was no-one  
22 available over the weekend. They did have an after-hours  
23 call-in voicemail system that we spoke to someone and  
24 relayed our concerns that we were seeing further  
25 degradation of the hillside.

26  
27 And on Monday, 13 January Matt Glover was back. He  
28 was looking at the retaining wall and scrambled down it to  
29 look at where the separation from that soil was from the  
30 front of the retaining wall, and he was getting concerned  
31 about the retaining wall.

32  
33 Then of course on 14 January we notified - not of  
34 course; excuse me. On 14 January we notified council of  
35 those bigger gaps occurring and those cracks I was  
36 describing yesterday, and then of course we had the failure  
37 on the 14th, on that day.

38  
39 Q. Thank you. Is it fair to say that you were actively  
40 concerned that there might be a further failure of  
41 the slope after the 5 January landslide?

42 A. Absolutely, categorically.

43  
44 Q. Thank you. That brings us to 14 January. Where were  
45 you when the 14 January landslide occurred?

46 A. In my living room writing an email to council about  
47 degradation on the slope.

1  
2 Q. I see. And you heard the landslide?  
3 A. I did.  
4  
5 Q. How would you describe the noise?  
6 A. Like a rumbling train, like - probably - like a  
7 thunderstorm.  
8  
9 Q. I see.  
10 A. A loud thunderstorm noise, lasted for about - it felt  
11 like two minutes but it was probably 10 seconds. So I'd  
12 say 10 seconds.  
13  
14 Q. And was Mrs Borghesi with you at the home at that  
15 time?  
16 A. She was.  
17  
18 Q. All right. And what did you do when you heard that  
19 noise?  
20 A. Both of us instantly ran out the backdoor, knowingly  
21 looking at each other that we knew what had happened, and  
22 then went to not the veggie patch area but - if needed,  
23 I could - you can't see it on the drawing here, on the  
24 picture - to the paved area, which we considered to be  
25 safe, and observed the back end of the landslip actually  
26 occurring, dust rising from down below. So we were outside  
27 within 15 seconds of the initial collapse.  
28  
29 Q. Shortly after going outside did you take video  
30 footage?  
31 A. Bronwyn did, my wife.  
32  
33 Q. Thank you. I want to show three of those videos, and  
34 if you could just make any comment about what's being seen  
35 while the videos play. If you need them to be played a  
36 second time, just say so. Could I first have  
37 RES.0001.0004.0142.  
38 A. So you want me to talk to this?  
39  
40 Q. Yes. How soon after is this?  
41 A. This is within seconds. You can see the dust rising  
42 from below, so I would say 20 seconds, 15 seconds after the  
43 landslide. So what you can see here, as you're looking  
44 along the edge of the retaining wall you can see moisture  
45 there, you can see the collapsing soil coming from  
46 underneath number 6 View Point Road, and that's probably  
47 all I can say to that video. I think there's another video

1 that shows more soil.

2

3 Q. Can I have, please, RES - before I do that I should  
4 tender that. I'll tender that video, thank you.

5

6 CHAIRPERSON: That video will be exhibit CA24. That's a  
7 video taken on 14 January 2025.

8

9 **EXHIBIT #CA24 (ADDED) VIDEO TAKEN ON 14 JANUARY 2025.**  
10 **RES.0001.0004.0142**

11

12 MR COSTELLO: Just to be clear, if these videos could be  
13 muted if they have sound; thank you. The next one is  
14 RES.0001.0004.0194. Is this taken around the same time?

15 A. Yes. What you see there is deeply saturated soil  
16 collapsing from underneath number 6 View Point Road, with a  
17 consistency of what I would describe as tiramisu, the same  
18 sort of colour, and then that soil - as Bronwyn pans, you  
19 can see - once again that's in the same timeframe as the  
20 earlier video. She pans back and you can see more water,  
21 liquified soil - there it is - collapsing from beneath the  
22 retaining wall at about that minus six level, completely  
23 consistent with where that green dye area was. There you  
24 can see - pause there. You can actually - may I point?

25

26 Q. Yes, of course. Please.

27 A. Actually the cursor's on it.

28

29 Q. Yes.

30 A. You can see that deeply saturated soil. That's on  
31 number 6. If you rerun the video you can see it flowing  
32 down --

33

34 Q. That looks almost like water. Do you think that's  
35 soil?

36 A. It's almost like water, yes. It's actually - I would  
37 describe it as more liquified than that first slip we saw.  
38 This is like water just flowing out of the hillside.

39

40 Q. If we could play that video again from the start,  
41 please. How soon after the landslide is this? Is it  
42 within a minute or?

43 A. Within the same minute. The landslide I believe was  
44 8.43, and this video has got metadata that says it's 8.43.  
45 Do you want me to talk to this at all?

46

47 Q. If there's any comment you wish to make, please make

1 it. But you don't have to feel like you're giving  
2 commentary.  
3 A. I think you can see scoria falling from behind - and  
4 topsoil falling from behind the retaining wall, and then  
5 you see that liquified soil under number 6 coming out.  
6  
7 Q. The trees that - or tree - might be trees; not sure -  
8 on the right of the picture there, they're on your  
9 boundary?  
10 A. Right on the boundary.  
11  
12 Q. Are these the screening trees that you had said that  
13 you've planted?  
14 A. Yes.  
15  
16 Q. Thank you.  
17 A. And we've - if I may?  
18  
19 Q. Yes, please.  
20 A. But some have been lost in this landslide. I think -  
21 let me make sure I get the number right. I think three of  
22 those trees have already gone down the hill, trees further  
23 to the left of what you're looking at.  
24  
25 Q. Thank you. I might just play - I'll tender that video  
26 too, thank you.  
27  
28 CHAIRPERSON: And that video will be part of CA24.  
29  
30 **EXHIBIT #CA24 (ADDED) VIDEO TAKEN ON 14 JANUARY 2025.**  
31 **RES.0001.0004.0194.**  
32  
33 MR COSTELLO: Thank you. There is a third, which is  
34 RES.0001.0004.0195.  
35 A. Do you want me to speak to this?  
36  
37 Q. Yes, please.  
38 A. There is that tiramisu type sludge coming out on  
39 number 6, just flowing like - it had a - well, I said  
40 tiramisu - almost like a lava type, totally liquified flow.  
41  
42 Q. Is that the end of the video? Could that be played  
43 again, please? There seems to be quite an amount of water  
44 in this video?  
45 A. Agree.  
46  
47 Q. That water seems to be flowing from a particular

1 point. Is that point around about what you would think is  
2 the green dye area?  
3 A. I would say that point - in fact in the middle of that  
4 photograph you can actually see like a puddle.  
5  
6 Q. Yes.  
7 A. If I can use that as the reference. I would say that  
8 point is similar to the same height to where the green dye  
9 was but fractionally maybe two metres further to the east  
10 of where the green dye was.  
11  
12 Q. Thank you.  
13 A. But very close.  
14  
15 Q. And this video was taken shortly after the other two?  
16 A. Correct.  
17  
18 Q. Thank you.  
19  
20 CHAIRPERSON: So that video will also be part of CA24.  
21  
22 MR COSTELLO: Thank you, Madam Chair. Paragraph 38 - that  
23 video can come down, thank you. Perhaps just to make  
24 things move a little more quickly could we have  
25 Mr Borghesi's statement on the screen, please. That's  
26 RES.0001.0003.0002. If we could have page 6, paragraphs 38  
27 and 39. Mr Borghesi, you'll see there at paragraph 38 you  
28 speak to witnessing liquified soil falling away from  
29 beneath 6 View Point Road. Is that what we've just seen in  
30 the videos?  
31 A. Yes, it is.  
32  
33 Q. Thank you. In paragraph 39 you mention that, "Water  
34 continued to flow in the eastern gully area at the same  
35 rate as witnessed prior to the 14 January landslide. The  
36 reinforcement wall was partly destroyed by this landslide  
37 as the liquified soil had removed the soil in front of (to  
38 the north) the reinforcement wall and its concrete  
39 foundations (piers)." Can I just ask you a couple of  
40 questions in connection with paragraph 39. The water that  
41 was continuing to flow, are you able to statement at what  
42 distance that water was from the escarpment?  
43 A. From the escarpment?  
44  
45 Q. Yes, from the top of the escarpment, pardon me.  
46 A. Well, if I can - if I may, when you say the top of the  
47 escarpment perhaps we could use the level of the veggio

1 patch ground level as the reference point.

2

3 Q. I just want to make sure that I understand your  
4 evidence. Is that the same as saying the top of  
5 the retaining wall?

6 A. Yes.

7

8 Q. Thank you.

9 A. So consistent I think with what I have here. It's at  
10 the minus - six metres below the top of the retaining wall  
11 is where we estimated this water and liquified soil was  
12 coming.

13

14 Q. And you were viewing that from near to but not  
15 directly behind the retaining wall?

16 A. From where those videos were taken.

17

18 Q. Yes, thank you. Now, are you able to say how long the  
19 water continued to flow for?

20 A. Weeks. So this is post 14 January. That water flowed  
21 continuously for many weeks - I'd estimate at least five or  
22 six weeks, but I'm not 100 per cent sure - and was flowing  
23 down onto Penny Lane and through the pavement on Penny Lane  
24 and into the drains on Penny Lane. So we were observing  
25 that flow of water - this is post 14 January --

26

27 Q. Yes.

28 A. -- for many weeks after that. And of course it has  
29 subsequently started to dry out as either the soil has  
30 dried out or the source of the water has been identified  
31 and terminated.

32

33 Q. Remind me, were you ever the subject of an evacuation  
34 order?

35 A. Yes, sir.

36

37 Q. Do you recall when you became the subject of such an  
38 order?

39 A. I believe it was 14 January, after the major slide.

40

41 Q. And how long were you out of the house for?

42 A. We're out of the house till today.

43

44 Q. And so how are you able to speak to the flow of water  
45 in the period after 14 January?

46 A. Through site visits that we were allowed to visit the  
47 property. But I think, more pertinently, by driving down



1 Point Nepean Road with a pair of binoculars or the naked  
2 eye and just looking at the water.  
3

4 Q. Yes, thank you. If those paragraphs could come down,  
5 please. If we could go to the next page, and if we could  
6 have paragraphs 40 to 43. Mr Borghesi, in this part of  
7 your statement you're speaking to the issue of damage to  
8 roads and other infrastructure on View Point Road?

9 A. Correct.  
10

11 Q. And this seems to be from on or about the time of  
12 the 5 January landslide; is that correct?

13 A. Correct.  
14

15 Q. And you say that you - in 42 you repeatedly asked  
16 representatives from the shire and South East Water what  
17 they were doing to respond to the water breaches that could  
18 be related to the landslides, however, you received no  
19 substantive response, other than both authorities  
20 constantly stating that they were continuing to identify  
21 the source of the water.

22 A. Correct.  
23

24 Q. Could you just expand upon the evidence you give in  
25 paragraph 42 to talk to your attempts to communicate with  
26 the shire and South East Water about this issue in that  
27 period?

28 A. Well, once we were aware of the significant breaches  
29 uphill of us on Charlesworth and Waller Place and Coburn  
30 Avenue, I think it is, we were, like other neighbours,  
31 becoming interested as to whether or not those breaches had  
32 anything to do with the water we were seeing in our  
33 hillside and cause of the landslide. So we were - as  
34 I went through each day after January 5 - between January 5  
35 and January 14 just 15 minutes ago, we were meeting with  
36 council representatives and South East representatives  
37 effectively every day, except for the weekend, and this  
38 question came up a number of times. And we didn't get any  
39 satisfaction with regard to whether those breaches in the  
40 roadway upstream of us were related to the landslip that  
41 occurred on our property. The feedback we had was they  
42 were continuing to identify the source of the water. They  
43 were running tests, they were doing dye tests, they were  
44 taking lab tests of water, both South East Water and  
45 council, to try to work out from where the water was  
46 coming.  
47

1 Q. Did you consider identification of the source of  
2 the water to be the most significant issue that ought to  
3 have been dealt with in that period?

4 A. No, not at all.

5  
6 Q. What was your view?

7 A. Repeatedly communicated to council employees was we  
8 felt the source of the water at this point was completely  
9 irrelevant. What was relevant was water is coming out of  
10 the head scarp and likely to be identified and tracked in a  
11 relatively narrow pathway back up to View Point Road in the  
12 vicinity of the work where the dye was put into the  
13 borehole that led to the green dye coming out of the scarp.  
14 So our point was, "Don't worry about where it's coming  
15 from. What you need to do is intercept it before it  
16 emanates from the scarp because once gravity gets a hold of  
17 it, as was evidenced between 5 and 14 January, it will just  
18 continue to erode the scarp." And because water was  
19 continuing to flow, as I said, for many weeks after  
20 14 January we felt it was imperative that council or South  
21 East Water undertake some urgent works to dig a trench or  
22 put spears in View Point Road to seek to intercept the  
23 water and, even if that were unsuccessful, it was critical  
24 that they do that rather than identify the source of  
25 the water.

26  
27 Q. Thank you. In paragraph 43 you speak of discussions  
28 with neighbours that made you aware of recent degradation  
29 at the top of View Point Road. Did you see that  
30 degradation with your own eyes?

31 A. Yes.

32  
33 Q. You saw that on visits to McCrae, notwithstanding that  
34 you were not in the house?

35 A. Correct. And, for clarification, we were granted  
36 access to a neighbour's house to use as our residence. So  
37 we were right opposite our place. So we were driving down  
38 View Point Road to this day regularly.

39  
40 Q. What was the nature of the degradation of the road?

41 A. I'd describe it as a depression that appeared to track  
42 the line of where stormwater drainage crosses Prospect Hill  
43 Road at the top of View Point Road such that if you were to  
44 come up View Point Road and turn left and drive over that  
45 depression a car would sort of bounce a little bit.

46  
47 Q. If you were driving up View Point Road and turning

1 left, was the depression on the left-hand side of the road?  
2 A. Yes, yes.  
3  
4 Q. Thank you. And so was it pothole-like?  
5 A. No.  
6  
7 Q. Was it like crocodile cracks?  
8 A. There are a lot of crocodile cracks in that area. So  
9 I'm not sure whether the crocodile cracks were just  
10 associated with this depression. I would call it like a  
11 shallow spoon drain perhaps 30 to 50 millimetres at its  
12 deepest point, as if you had a big pipe and pressed it into  
13 the bitumen, like a depression.  
14  
15 Q. Finally, Mr Borghesi, are you in dispute with  
16 the council at the moment in respect of the 2025 landslide?  
17 A. No, we are not.  
18  
19 Q. All right. Thank you. Mr Borghesi, those are the  
20 questions that I had for you. It's likely that others will  
21 wish to ask you questions. But, before I sit down, are  
22 there any other matters that you wanted to bring to the  
23 attention of the chair or you feel you haven't had the  
24 opportunity to expand upon to the extent you would wish to?  
25 A. No, I think I'm satisfied.  
26  
27 MR COSTELLO: Thank you. No further questions.  
28  
29 CHAIRPERSON: Thanks, Mr Costello. Are there any  
30 questions?  
31  
32 MS FOLEY: Madam Chair, I seek leave to ask some questions  
33 of Mr Borghesi. I've had a discussion with my learned  
34 friend Mr Costello and I understand that the area that I'm  
35 proposing to traverse is of satisfaction to him.  
36  
37 CHAIRPERSON: Thanks, Ms Foley. You can proceed.  
38  
39 <EXAMINED BY MS FOLEY:  
40  
41 MS FOLEY: Mr Borghesi, my name is Kathleen Foley and I'm  
42 acting for the shire in these proceedings. I have a few  
43 questions for you. In your witness statement you describe  
44 various works that you've undertaken at the property since  
45 December 2020, and one item of work that you describe is  
46 what you call the reinforcement wall, and I want to ask you  
47 some questions about the reinforcement wall. In your

1 witness statement you state that the reinforcement wall was  
2 installed in November 2022; do you recall that?  
3 A. Yes.  
4  
5 Q. I'd like you to think carefully about that date. Do  
6 you stand by that evidence?  
7 A. May I just check?  
8  
9 Q. Yes.  
10 A. Which date did you share with me?  
11  
12 Q. It's in paragraph 29(f). You state that the  
13 reinforcement wall was installed in November 2022.  
14 A. No, that is incorrect.  
15  
16 Q. What is your recollection now of what date that wall  
17 was constructed?  
18 A. The reinforcement wall was --  
19  
20 Q. Yes, the one you say was constructed in your witness  
21 statement in November of 2022?  
22 A. I'd have to check my witness statement, but the  
23 reinforcement wall was installed I believe in January 2024.  
24  
25 Q. Could you check your witness statement just so we're  
26 not at cross-purposes? I think you might have it there.  
27 No? That's all right. You can take it from me it says  
28 November 2022. So your evidence now is that wall was  
29 constructed in January 2024?  
30 A. That is correct.  
31  
32 Q. All right. I'd like to take you to one document that  
33 bears upon this date. Operator, if we could go to  
34 MSC.5039.0001.0259. Thank you. Mr Borghesi, you can see  
35 this is an email from you to Mr Simon Bulk; you can see  
36 that?  
37 A. Yes, I can  
38  
39 Q. Okay. And the date is 18 October 2023. And he is of  
40 Maw Civil; do you recall that company?  
41 A. Yes, I do.  
42  
43 Q. All right. And they constructed the reinforcement  
44 wall for you?  
45 A. Correct.  
46  
47 Q. And you'll see that this is an email from you to him

1 saying, "We may need to do the veggie patch job separate  
2 from a much bigger job." And then you say, "We have a  
3 wedding here in March."  
4 A. Correct.  
5  
6 Q. Is that a wedding the following March, 2024?  
7 A. Correct.  
8  
9 Q. So am I right that you had decided to proceed more  
10 quickly in relation to this particular wall because there  
11 was a wedding planned for March?  
12 A. That would be correct.  
13  
14 Q. All right. Now, you state in your witness statement  
15 that the shire was not advised of this, and by that you  
16 meant the wall?  
17 A. The reinforcement wall.  
18  
19 Q. Yes. To be clear, you didn't apply for a building  
20 permit?  
21 A. Correct.  
22  
23 Q. And you didn't otherwise let the shire know that you  
24 were proposing to build this wall; correct?  
25 A. Correct.  
26  
27 Q. Despite the landslip event that had happened at your  
28 property in 2022; that's right?  
29 A. Correct.  
30  
31 Q. All right. You didn't say in your witness statement  
32 in the relevant paragraph how high the reinforcement wall  
33 was?  
34 A. Correct.  
35  
36 Q. Why was that? Why did you not state how high it was?  
37 A. Because I didn't think it was relevant.  
38  
39 Q. You had stated in an earlier paragraph how high the  
40 old retaining wall was. Why is it that in relation to this  
41 wall you felt it wasn't relevant?  
42 A. Because it was following the profile of the land and  
43 not increasing the height of soil retained.  
44  
45 Q. I see. In evidence yesterday when Mr Costello asked  
46 you some questions about this wall you initially agreed or  
47 said, rather, that it was - sorry, there were a number of

1 walls - that the reinforcement wall was the same height as  
2 the earlier wall; do you recall saying that?  
3 A. Yes, correct.  
4  
5 Q. And then later you agreed that in fact it was higher  
6 than that earlier wall; do you recall that?  
7 A. Not precisely in that - the way you described it.  
8  
9 Q. All right. You'd accept that in the course of your  
10 evidence you later said that it was just under two metres?  
11 A. Correct.  
12  
13 Q. This second wall. All right. Are you aware,  
14 Mr Borghesi, that the relevant exemption for retaining  
15 walls from the Building Regulations 2018 states, "Any  
16 retaining wall less than one metre in height that is not  
17 associated with other building work or with protection of  
18 adjoining property is exempted"?  
19 A. Yes.  
20  
21 Q. So you accept that you knew that if this wall was one  
22 metre or higher you needed a building permit?  
23 A. No, I don't accept that.  
24  
25 Q. All right. What's the reason for saying that you  
26 didn't need a building permit for this wall, given that  
27 your evidence yesterday is it's just under two metres in  
28 height?  
29 A. Because we weren't changing the height of the soil  
30 that was being retained.  
31  
32 Q. All right. The exemption doesn't refer to any kind of  
33 exception of that nature, does it?  
34 A. I don't know.  
35  
36 Q. All right. I just read out to you what the exemption  
37 is, and you said you understood it. Those words don't  
38 refer to anything of the kind you've just referred to in  
39 relation to soil profile; you agree with that?  
40 A. I would agree with that.  
41  
42 Q. All right. You could have called the council and  
43 confirmed whether a building permit was required for this  
44 wall, but you didn't?  
45 A. Correct.  
46  
47 Q. You could have sought advice from a professional in

1 this area in relation to whether a building permit was  
2 required or not, but you didn't?  
3 A. Correct.  
4  
5 Q. You just formed that view yourself?  
6 A. Yes, I did.  
7  
8 Q. Not based on the language of the exemption?  
9 A. No, based on the concept of soil retained.  
10  
11 Q. All right. But you'd accept the exemption is what  
12 governs the situation?  
13 A. I don't know. I'd have to study the exemption.  
14  
15 Q. I see. In circumstances where there had been a  
16 landslip in 2022 it would have been prudent, don't you  
17 agree, to have contacted the council to check whether or  
18 not a building permit was required for this wall?  
19 A. I'm not sure I agree with that.  
20  
21 Q. I see. I want to ask you a few more questions about  
22 the height. In evidence yesterday you said it was just  
23 under two metres. You'll recall that this retaining wall  
24 was built with sections of concrete sleepers?  
25 A. Correct.  
26  
27 Q. And at its highest point you'll recall there are 10  
28 sleepers built on top of one another?  
29 A. Correct.  
30  
31 Q. And you recall that the concrete sleepers themselves  
32 had dimensions which included a height of 200 millimetres?  
33 A. Correct.  
34  
35 Q. And so on that maths it's a two metre high wall at its  
36 highest point?  
37 A. No, it's not.  
38  
39 Q. Can you tell me what's wrong with my mathematics  
40 please?  
41 A. I can.  
42  
43 Q. Go on.  
44 A. The wall is on a slope. It's angled back probably  
45 five to 10 degrees. So if you had it completely flat when  
46 you had 10 sleepers the height of the wall is zero. If  
47 it's completely vertical, it would be two metres. If it's

1 angled back, it's less than two metres.

2

3 Q. All right. And is that something that the exemption  
4 speaks to, that you can take into account the angle?

5 A. I'm not sure, but height is usually measured  
6 vertically.

7

8 Q. All right. It was the kind of thing that you should  
9 be sure about if you were deciding not to apply for a  
10 building permit, don't you agree?

11 A. I'm not sure.

12

13 Q. I see. This wall, when it was constructed, involved  
14 bored piers?

15 A. Correct.

16

17 Q. Steel columns?

18 A. Correct.

19

20 Q. Concrete sleepers?

21 A. Correct.

22

23 Q. You had to bring in excavating equipment to build it?

24 A. No.

25

26 Q. All right. You didn't have on the quote an excavator  
27 that was involved in the project?

28 A. There was no excavator on the project.

29

30 Q. All right. So was there machinery that was --

31 A. Yes.

32

33 Q. Yes. And there was machinery to drill into the ground  
34 to put in the bored piers?

35 A. Correct.

36

37 Q. All right. So we had machinery drilling into the  
38 ground. We had bored piers. We had steel columns. We had  
39 concrete sleepers. And no building permit was applied for?

40 A. Correct.

41

42 CHAIRPERSON: Ms Foley, he's accepted numerous times that  
43 he didn't seek a building permit.

44

45 MS FOLEY: Thank you, Chair. I'll move to a different  
46 topic. Yes, if we could tender this email, please. Chair,  
47 I seek leave to tender that email.



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CHAIRPERSON: Is there any objection?

MR COSTELLO: No, thank you, Chair.

CHAIRPERSON: The email from Mr Borghesi to Mr Bulk dated 18 October 2023 is exhibit MPSC1.

**EXHIBIT #MPSC1 EMAIL FROM MR BORGHESI TO MR BULK DATED 18 OCTOBER 2023**

MS FOLEY: Thank you. Mr Borghesi, this inquiry has heard expert evidence from Mr Paul that the less we disturb the landscape the less chance we might trigger landslides. Did you watch Mr Paul's evidence?

A. Most of it I did, yes.

Q. All right. In the time that you've had your property you have done a number of different items of work to it; would you agree?

A. Yes.

Q. A new courtyard and a new garage?

A. Correct.

Q. A new balcony and a courtyard on the other side of the property?

A. What do you mean by the other side?

Q. On the western side?

A. Yes.

Q. Removing and trimming vegetation?

A. Yes. Trimming. Mostly trimming, yes.

Q. Installing retaining walls?

A. Of the ones we just described, yes.

Q. Removal of trees?

A. No - oh, one tree, yes.

Q. Well, also removal of trees in association with the earlier renovation?

A. Correct.

Q. Installing irrigation systems?

A. Correct.

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Q. Planting vines?  
A. Yes.

Q. All right. In the course of any of the work that you've done did you ever seek an expert report from a geotechnical engineer as to the cumulative impacts of the works on your property to better inform you in relation to any more work that you were proposing?  
A. No.

Q. In your statement in describing this further wall you stated that it was a geotechnically engineered wall. Did you seek a geotechnical report in relation to the construction of that wall?  
A. Yes.

Q. Has that report been provided to the board?  
A. Yes.

Q. Not as an exhibit to your statement?  
A. Through the witness statement?

Q. Yes.  
A. No, but in prior evidence submitted to the board of inquiry.

Q. Who authored that report, Mr Borghesi?  
A. CivilTest.

Q. It wasn't a report that was done for the purposes of designing the wall?  
A. Not specifically.

Q. All right. So something that was done afterwards?  
A. What was done afterwards? I don't understand the question.

Q. I withdraw that. You say in your statement that the wall was geotechnically engineered?  
A. Yes.

Q. Am I right that you didn't mean you sought geotechnical advice in relation to the construction of the wall?  
A. No, I would say we sought geotechnical advice in relation to the construction of the wall as well as

1 structural engineering advice.

2

3 Q. Before you built it or afterwards?

4 A. Before.

5

6 Q. All right. And you say that that's in one of the  
7 CivilTest reports?

8 A. The geotechnical information that the structural  
9 engineer used to design the wall before the wall was built  
10 has been tendered to the board of inquiry.

11

12 Q. All right. So is it your evidence that the design of  
13 the wall was based on geotechnical advice?

14 A. Yes.

15

16 Q. I see. Mr Borghesi, I want to turn to a different  
17 topic and that is the 10-metre tree that was removed. In  
18 evidence yesterday you gave evidence that you felt that the  
19 removal of the tree was consistent with the conditions in  
20 place for renovation works; do you recall that?

21 A. That was my belief, yes.

22

23 Q. And in the questions and answers that followed you  
24 identified the building permit that was issued in 2015?

25 A. I don't recall that.

26

27 Q. All right. Is it the works that were completed in  
28 early 2018 that you were talking about when you were  
29 referring to the renovation works associated with that  
30 tree?

31 A. Yes.

32

33 Q. All right. And in looking at the transcript it didn't  
34 seem clear that you had ever identified when the tree was  
35 removed. Am I right that it was in 2021?

36 A. I would say that is accurate.

37

38 Q. All right. Is it your evidence that the removal of  
39 the tree in 2021 was somehow authorised under the permit  
40 associated with the works that were completed in 2018?

41 A. I would say I'm not sure.

42

43 Q. All right. You never called the council and checked  
44 that matter before the tree was removed?

45 A. No, I did not.

46

47 MS FOLEY: All right. No further questions.

1  
2 CHAIRPERSON: Thanks, Ms Foley. Are there any other  
3 questions? No. Mr Costello, do you have any other  
4 questions?

5  
6 MR COSTELLO: No, thank you, Madam Chair.

7  
8 CHAIRPERSON: Mr Borghesi, that completes your evidence.  
9 Thank you for coming along to assist the inquiry and thank  
10 you very much for your patience today in particular. You  
11 can leave the witness box.  
12

13 **<THE WITNESS WITHDREW**

14  
15 MR COSTELLO: Madam Chair, that's the only witness for  
16 today. As I understand it, we will sit tomorrow.  
17

18 CHAIRPERSON: Yes.  
19

20 MR COSTELLO: And take the evidence of Ms Olsen.  
21

22 CHAIRPERSON: Yes. And we would ordinarily start at 10,  
23 and I can start at 10. But, if others would prefer to  
24 start earlier because that means we might finish by  
25 lunchtime, we can do that. I'm in the hands of counsel as  
26 to what time you prefer to start.  
27

28 MR COSTELLO: I would certainly plump for an early start,  
29 but I will only do so if my learned friend on behalf of  
30 South East Water is content to do so.  
31

32 MS SIEMENSMA: Madam Chair, we've conveyed to the  
33 solicitors assisting that 10 am is convenient. Earlier was  
34 a bit difficult.  
35

36 CHAIRPERSON: We'll start at 10 am. Thank you. We'll  
37 start at 10. We'll adjourn until 10 am tomorrow.  
38

39 **AT 5.10 PM THE HEARING ADJOURNED UNTIL FRIDAY, 16 MAY 2025**  
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