

**Board of Inquiry into the McCrae landslide**

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

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

**Wednesday, 14 May 2025 at 10.00am**

**(Day 5)**

**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 MR COSTELLO: Good morning, Madam Chair.  
2  
3 CHAIRPERSON: Good morning.  
4  
5 MR COSTELLO: Can I indicate that Ms Pepler appears for  
6 the State today.  
7  
8 CHAIRPERSON: Thank you.  
9  
10 MR COSTELLO: The first witness is Mr Bolch, who will be  
11 taken by Ms Kittikhoun.  
12  
13 CHAIRPERSON: Thank you. Is Mr Bolch in court?  
14  
15 MS KITTIKHOUN: Yes, he is.  
16  
17 <JOHN NICHOLAS BOLCH, sworn:  
18  
19 <EXAMINED BY MS KITTIKHOUN:  
20  
21 CHAIRPERSON: Mr Bolch, this is Ms Kittikhoun. She is one  
22 of the counsel assisting this inquiry, and she'll ask you  
23 some questions.  
24 A. Thank you.  
25  
26 MS KITTIKHOUN: Good morning, Mr Bolch. Mr Bolch, could  
27 you please state your full name for the record?  
28 A. John Nicholas Bolch.  
29  
30 Q. And you reside at an address that is known to the  
31 inquiry?  
32 A. Yes, I do.  
33  
34 Q. What is your current occupation, Mr Bolch?  
35 A. I'm a licensed registered plumber.  
36  
37 Q. And did you receive a notice from the inquiry to  
38 attend and to give evidence today?  
39 A. I did.  
40  
41 Q. Mr Bolch, did you make a witness statement for the  
42 inquiry?  
43 A. I have.  
44  
45 Q. Could a copy of the witness statement and its exhibits  
46 please be provided to Mr Bolch. Mr Bolch, are the contents  
47 of that statement true and correct?

1 A. Yes, they are.

2

3 Q. Could you please date and sign that witness statement.  
4 Madam Chair, I tender that statement and its exhibits.

5

6 CHAIRPERSON: The statement of John Nicholas Bolch is  
7 exhibit CA19, and the documents referred to in Mr Bolch's  
8 statement will also be part of CA19.

9

10 **EXHIBIT #CA19 STATEMENT OF JOHN NICHOLAS BOLCH AND**  
11 **DOCUMENTS REFERRED TO THEREIN.**

12

13 MS KITTIKHOUN: Thank you, Madam Chair. Mr Bolch, you  
14 said earlier that you're a licensed and registered plumber.  
15 How many years of experience do you have in the plumbing  
16 industry?

17 A. Nearing 50 years.

18

19 Q. And do you currently operate your own business?

20 A. Yes, I do.

21

22 Q. What is that business called?

23 A. CPM Commercial Plumbing Maintenance.

24

25 Q. And through your business you've been involved in  
26 various projects with different water entities?

27 A. Yes, I have.

28

29 Q. Entities like Melbourne Water, South East Water and  
30 Yarra Valley Water?

31 A. Correct

32

33 Q. So you have experience in dealing with water mains; is  
34 that right?

35 A. Yes, I do.

36

37 Q. Could you explain what a water main is?

38 A. A water main is a pipe that transports water from  
39 point A to point B. They're throughout the street networks  
40 and industrial estates, residential estates to provide  
41 water to housing and for industry.

42

43 Q. I see. And what are water mains typically made out  
44 of?

45 A. The common materials are UPVC, a modified PVC, PE  
46 pipework, and then there is other variances of that into  
47 cement lined, cast-iron and mild steels and so forth. But

1 the first three are the most common.

2

3 Q. I see. So you have experience in installing water  
4 mains and repairing water mains?

5 A. Yes, I do.

6

7 Q. You also have experience in installing sewer lines?

8 A. Yes, I do.

9

10 Q. And sewer lines are installed according to certain  
11 fall or downward slope ratios; is that right?

12 A. That's correct.

13

14 Q. What's a typical ratio?

15 A. One in 60 is the normal grade.

16

17 Q. And that's because sewer relies on the downward force  
18 of gravity to flow?

19 A. It does.

20

21 Q. You also have experience in installing stormwater  
22 drainage; is that right?

23 A. That's correct.

24

25 Q. So it would be fair to say, Mr Bolch, that you have  
26 extensive knowledge and experience in water, sewer and  
27 stormwater drainage networks?

28 A. That would be correct.

29

30 Q. I'm now going to turn to some questions about  
31 605 Point Nepean Road, which I'll refer to as "the  
32 property" moving forward. Prior to the landslide of  
33 14 January did you reside at the property?

34 A. Yes, we moved in there just prior to Christmas.

35

36 Q. And by "we" do you mean you and your wife, Vicki?

37 A. That's correct.

38

39 Q. And when was the property purchased?

40 A. We purchased it 12 months earlier, in the January of  
41 24, and settled on the property in the Easter of 24, which  
42 was around April.

43

44 Q. I see. And the property - its western boundary is  
45 shared with two other properties; is that right?

46 A. That's correct.

47

1 Q. The Morans' property?  
2 A. Yes.  
3  
4 Q. And 607-609 Point Nepean Road?  
5 A. That's correct.  
6  
7 Q. Can you tell us a little bit about the property?  
8 A. It's a quaint little holiday home. My wife fell in  
9 love with it. It's a white weatherboard type home. It's  
10 built back into the escarpment. It's a two-storey home  
11 with a void underneath, and then a lower level garage. The  
12 upper level is the living and kitchen area and so forth.  
13 The lower level is the bedrooms and so forth, an ensuite  
14 and so forth there, yes.  
15  
16 Q. Mr Bolch, I'm now going to ask you some questions  
17 about the 5 January landslide. Were you at the property  
18 when the landslide occurred?  
19 A. No.  
20  
21 Q. Where were you?  
22 A. We were camped 10 minutes away down on the Capel Sound  
23 Foreshore. It's been a family tradition for many years  
24 from my wife's side. So all the grandchildren and her  
25 sisters and so forth all come. So there's a fair number of  
26 us that go there every year for camping.  
27  
28 Q. I see. So when did you first find out about the  
29 5 January landslide?  
30 A. On 7 January.  
31  
32 Q. And could you tell us how you found out about the  
33 5 January landslide?  
34 A. We were attending back to the property to have some  
35 friends over for lunch, and at that time the next-door  
36 neighbour, Paul Willigenburg, came into the property and  
37 told me about the landslide. Yes, so that was the first  
38 I heard of it then.  
39  
40 Q. I see. What did Paul say?  
41 A. He told us that there had been another landslide,  
42 because I knew previously he had been involved in the  
43 earliest landslide from 2022, and he also told me he had  
44 been in touch with the Mornington Peninsula Shire Council  
45 in regards to water running down Penny Lane on 16 December.  
46  
47 Q. I see. And did Paul tell you whether he received a

1 response from the council?

2 A. No.

3

4 Q. I see. Had you personally observed water flowing on  
5 Penny Lane prior to 7 January?

6 A. No.

7

8 Q. Following your conversation with Paul what did you do  
9 next?

10 A. Went inside and we entertained our guests for the day  
11 over lunch, and that was basically it. We didn't sort of  
12 take a great deal more consideration of what Paul had told  
13 us other than that there was a minor landslide of some  
14 sort, yes.

15

16 Q. Did you at any stage go onto the balcony to try and  
17 see the Morans' property?

18 A. We were out on the balcony, but with the vegetation -  
19 it's fairly heavily vegetated, so it was difficult to see  
20 anything. So there was nothing really obvious to see.

21

22 Q. I see. Mr Bolch, I'm now going to turn to some  
23 questions about what occurred in the aftermath of  
24 the 5 January landslide. On 9 January did you speak to  
25 Nick and Kellie Moran?

26 A. Yes, I was in the Penny Lane roadway there, or the  
27 lane, and I spoke to both Nick and Kellie.

28

29 Q. And what did you discuss?

30 A. We talked about the landslide and I enquired how they  
31 were, and then Nick was talking to me about the insurance  
32 company, we had a little conversation in regards to the  
33 insurance company. One of the items was that they were  
34 looking at putting some sort of support mechanism,  
35 containers, into the property, and with that access was  
36 probably a little bit limited from Penny Lane, as Nick had  
37 indicated he wasn't sure how they were going to do that.  
38 So I offered access from our property because that would  
39 have given them probably a better advantage to try and get  
40 containers in with a crane or whatever they needed to do.

41

42 Q. I see. And at the time did you understand why they  
43 wanted to insert the shipping containers?

44 A. It was - from Nick's conversation with me, it was more  
45 about just shoring up or supporting what was there, so if  
46 there was any further incidents that it would give it some  
47 sort of support mechanism. That's what my understanding

1 was.

2

3 Q. I see. Can I take you now to 11 January. Did you see  
4 workers at the Morans' property that day?

5 A. Yes, around that particular time there was a worker on  
6 the deck at the front of the house, it's a lower level of  
7 the house - we've got a very good view across from our  
8 balcony to their balcony - and they were pulling up - the  
9 gentleman there was pulling up the decking material.

10

11 Q. The decking at the front of the property?

12 A. At the front of the property, yes.

13

14 Q. I see. And did you see the workers doing anything  
15 else?

16 A. They were loading sandbags and pipe in underneath the  
17 decking. There was one particular worker there. The  
18 second worker seemed to be coming and going a bit. He  
19 seemed to be maybe obtaining the materials or whatever they  
20 needed or carting materials up to the deck for the main  
21 person to be doing the works.

22

23 Q. And what did you think they were trying to achieve by  
24 installing the sandbags and pipes?

25 A. From a plumber's point of view, they were trying to  
26 divert the water to run down towards Penny Lane from that  
27 particular area.

28

29 Q. And on the next day, 12 January, did you go to  
30 Penny Lane?

31 A. Yes, I did.

32

33 Q. What did you see?

34 A. I went in there to have a look and see what was going  
35 on, and probably sticky-nose, and then I proceeded to take  
36 a video of the water running down Penny Lane because it was  
37 a substantial flow. When I panned over the top of the gate  
38 and towards their retaining wall you could see a lot of  
39 silt, sand building up on the lower grass level of  
40 the retaining wall. As I moved around you could see where  
41 they'd put the pipe coming out from underneath the deck,  
42 but it had virtually stopped flowing. So obviously the  
43 sand and that had built up that much that it couldn't flow  
44 out the relief point that they were trying to achieve,  
45 which is probably a common thing with sand and water. It  
46 doesn't take long for it to do that.

47

1 Q. I see. Perhaps then if we could go to that video,  
2 which is exhibit 1 to Mr Bolch's statement, which is  
3 RES.0003.0002.0033. This is the video recording that you  
4 were referring to, Mr Bolch?  
5 A. Yes, it is.  
6  
7 Q. And that was taken on 12 January?  
8 A. Yes.  
9  
10 Q. And as the video is playing could you explain what the  
11 footage shows?  
12 A. So this shows the water flowing down Penny Lane. We  
13 are now panning towards Point Nepean Road. You can see the  
14 sand or the silt along either side of the water travel.  
15 Now walking back up towards their gate into the front yard  
16 of their property. You can see more of the silt on the  
17 concrete there and the water path still flowing from this  
18 point. And then when we pan over the gates there -  
19 I didn't enter their property because it would be not  
20 particularly nice to do. And then you can see the water  
21 flowing over the - I've zoomed in, just watched the water  
22 flowing over there. You can see the amount of silt on the  
23 grass, and that's along a fair length of the retaining wall  
24 where the water has been flowing over, and there's silt all  
25 along the bottom of the retaining wall.  
26  
27 Q. Mr Bolch, when you saw this level of water flow did  
28 you find it surprising?  
29 A. Yes, I did.  
30  
31 Q. And why is that?  
32 A. Well, a constant flow of water is unusual. We've been  
33 a particularly dry summer. We've had very little rain. So  
34 I was interested at that point to see, understand where  
35 water was coming from/to at this point.  
36  
37 Q. So at that point in time you didn't know where the  
38 water was coming from?  
39 A. No, I had no idea.  
40  
41 Q. And did you at that point think that the water might  
42 be related to the landslide of 5 January?  
43 A. Most certainly, yes.  
44  
45 Q. And why is that?  
46 A. Well, landslides traditionally need a lot of moisture,  
47 I believe, a lot of saturation in the material for it to



1       become heavy, then to not be able to hold on and slide.  
2  
3       Q.    I see.  And later that day on 12 January did you and  
4       Vicki go for a drive around the local area?  
5       A.    Yes, we did.  
6  
7       Q.    And you did so to locate the source of the water?  
8       A.    Yes, to have just a further look around to see what  
9       might be the reasons for it.  
10  
11      Q.    I see.  And where did you go to have a look around?  
12      A.    Mainly up to Coburn Avenue and to Charlesworth, at  
13      that intersection there.  
14  
15      Q.    What did you see when you got there?  
16      A.    I slowed right down to nearly a stop, there wasn't a  
17      great deal of traffic, and I pointed out to my wife, I said  
18      look at the water coming down on either side of the kerbs  
19      in Charlesworth Street towards Coburn Avenue.  
20  
21      Q.    Yes.  And did you notice any signs of damage on the  
22      road surface at the intersection of Coburn and  
23      Charlesworth?  
24      A.    Yes, it was soft and spongy.  I probably didn't take  
25      enough notice of it, but I did note that it was - yes, that  
26      it was unusual for the road to be like that.  
27  
28      Q.    I see.  And did you think it was soft and spongy due  
29      to water damage?  
30      A.    Most certainly, yes.  
31  
32      Q.    I see.  Did you conduct any further investigations  
33      that day?  
34      A.    No, I did not.  
35  
36      Q.    Mr Bolch, I'm now going to ask you some questions  
37      about the landslide that occurred on 14 January.  Were you  
38      at the property when the 14 January landslide occurred?  
39      A.    No, I was not.  
40  
41      Q.    Where were you?  
42      A.    I was at a meeting with one of our clients at  
43      Cranbourne, at Summerset Retirement Village.  
44  
45      Q.    I see.  And how did you learn about the landslide?  
46      A.    Whilst I was in the meeting I had a message come  
47      through on my phone.  When I'd finished with the meeting

1 I read that message, or listened to the voicemail message  
2 at that stage because it had gone to that, from Mark Rhodes  
3 enquiring if we were okay and was our property involved in  
4 the landslide, and he also attached a photo in the message  
5 that he sent to me.  
6

7 Q. And is Mark Rhodes a friend of yours?

8 A. Yes, he is.  
9

10 Q. What did you do after Mark told you about the  
11 landslide?

12 A. I contacted my wife, who was down at Capel Sound, and  
13 herself and my stepdaughter, the oldest girl, Sasha, they  
14 got on their push bikes and road down to that point of  
15 the - or to the property, and I left Cranbourne at that  
16 stage to drive down. I was a considerably further distance  
17 away, so they got to the property well before me.  
18

19 Q. I see. So you were driving down to meet Vicki and  
20 Sasha?

21 A. Yes.  
22

23 Q. What time did you arrive in McCrae?

24 A. About quarter past 10.  
25

26 Q. And were you able to drive to the property?

27 A. No, there was a roadblock further up on the Dromana  
28 side. I spoke to the police officer there, who allowed me  
29 to enter past the roadblock, and I got down within 300-odd  
30 metres of the house, because the road was blocked from that  
31 point. So I was able to park and then I walked along the  
32 beach track on the beach side.  
33

34 Q. I see. So Point Nepean Road was closed off?

35 A. Yes.  
36

37 Q. And you walked along the beach track on Point Nepean  
38 Road?

39 A. That's correct.  
40

41 Q. Okay. And you met your wife and your stepdaughter  
42 Sasha at that point on the beach track?

43 A. Yes, I did.  
44

45 Q. What was your state of mind at that point?

46 A. I was really just concerned for - that everyone was  
47 safe, and, yes, that was probably more so. It was just

1 concern that everyone was okay, yes.  
2  
3 Q. I see. And facing the landslide site from where you  
4 were on the beach track could you see much of the landslide  
5 site?  
6 A. Yes, you could see where the house had shifted off its  
7 foundations and moved towards Point Nepean Road, yes.  
8  
9 Q. Were you able to go inside your property on  
10 14 January?  
11 A. Not when I got there. I was unable to go in.  
12  
13 Q. Had Vicki and Sasha been inside the property that day?  
14 A. Yes, they had.  
15  
16 Q. And that was prior to your arrival?  
17 A. That's right.  
18  
19 Q. And did Vicki and Sasha take photos of the landslide  
20 site from the balcony of the property?  
21 A. Yes, they did.  
22  
23 Q. And did they show you those videos?  
24 A. They did.  
25  
26 Q. Could we please go to exhibit 3 of Mr Bolch's  
27 statement, which is RES.0003.0002.0035. This is a video  
28 that Vicki took from the balcony of the property on  
29 14 January?  
30 A. That is correct.  
31  
32 Q. Okay. Could we please play the video. Mr Bolch, what  
33 did you think when you saw this video?  
34 A. Yes, the devastation or the destruction of that house  
35 was, yes, a lot to consume, yes.  
36  
37 Q. Could we please next go to exhibit 4 of Mr Bolch's  
38 statement, which is RES.0003.0002.0036. This is another  
39 video that was taken from the balcony on 14 January by  
40 Vicki?  
41 A. Yes, it is.  
42  
43 Q. Okay. Could you describe what that - could we please  
44 play the video. Could you please describe what the video  
45 shows?  
46 A. Yes. So the video is showing the water flowing from  
47 the escarpment down in the centre of that video, and that

1 is somewhere between the house above and the house below.  
2 Exact location of that on the boundary lines I'm unsure of.  
3

4 Q. And when you say the house above you're referring to  
5 10-12 View Point Road?

6 A. That's correct.  
7

8 Q. And below you're referring to the Morans' property?

9 A. That's correct, yes.  
10

11 Q. Since the 14 January landslide have you been able to  
12 occupy the property?

13 A. No, we have not.  
14

15 Q. Have you been allowed access to the property?

16 A. Twice. Once around the 13, 14 February to make the  
17 house secure after it had been ransacked. A number of  
18 houses through there - or the majority of the houses had  
19 been ransacked. So I was - I contacted the building  
20 surveyor for the council and spoke to him about having  
21 access, which I did. I entered the property for a very  
22 short period, really didn't have a great deal of time to do  
23 any assessment of what had been taken. A couple of photos  
24 and basically locked the door and then left the property.  
25 And then again on 28 February, which is our wedding  
26 anniversary, so I remember that very well, we were allowed  
27 to access the property for approximately an hour to remove  
28 personal items that we wanted to get out of the property.  
29

30 Q. Mr Bolch, I'm now going to bring you back to the  
31 immediate aftermath of the 14 January landslide. On  
32 15 January, the day after the landslide, did you take a  
33 drive around Charlesworth Street and the surrounding  
34 streets?

35 A. I did.  
36

37 Q. And you did so to look for the possible source of  
38 the water; is that right?

39 A. That's correct.  
40

41 Q. And did you first go to the intersection of  
42 Charlesworth Street and Coburn Avenue?

43 A. Yes, I did.  
44

45 Q. Before I ask you further questions, Mr Bolch, could we  
46 please bring up exhibit 5 to Mr Bolch's statement, which is  
47 RES.0003.0002.0037, and specifically go to page 4.

1 Mr Bolch, is this a photo you took at the Charlesworth  
2 Street and Coburn Avenue intersection?  
3 A. Yes, it is, looking west, or in a westerly direction,  
4 yes.  
5  
6 Q. And that was taken on 15 January?  
7 A. Correct.  
8  
9 Q. Could you please explain to us what you saw at that  
10 intersection?  
11 A. I'm seeing a further deterioration of the road there  
12 on the south side of the road. You can see on the northern  
13 side the road is starting to deteriorate in that area as  
14 well. A lot of water running out of the grass area, the  
15 green grass area, running into the kerb, sufficient amount  
16 of water there, and it was very boggy and wet on that  
17 particular side. When you look on the other side of the  
18 intersection there you can see the grass is a lot drier on  
19 that side. But, yes, very wet where I was standing to take  
20 that photo.  
21  
22 Q. I see. And did you see that the asphalt was visibly  
23 cracked?  
24 A. Yes. You can see the deterioration of the road where  
25 those bollards are is considerable, and with vehicle  
26 traffic driving over that it would have just kept  
27 undermining that particular surface, yes.  
28  
29 Q. Could you explain to us why you think that the asphalt  
30 cracked like that?  
31 A. Asphalt's enemy is water. If water gets underneath  
32 asphalt it softens the substructure, the crushed rock base  
33 and so forth, and with vehicle traffic going over it the  
34 asphalt starts to flex and break up.  
35  
36 Q. I see. And what did you think after seeing all of  
37 this water and damage?  
38 A. Well, this - at this point I'm thinking, well, this is  
39 where - you know, there's an issue along here with water  
40 flowing down the streets, and you're trying to link does  
41 this have something to do with the landslide because of  
42 the water coming down Penny Lane, yes.  
43  
44 Q. And did you think that water does not just start  
45 bubbling up through the surface in the absence of a source  
46 of supply?  
47 A. Yes, most certainly water doesn't just start appearing

1 to the surface unless there's a source to supply that  
2 water.

3

4 Q. And did you think it was a drainage issue at that  
5 stage?

6 A. I was still unsure whether it was a drainage issue.  
7 We'd had no rain, once again. It had been a very dry  
8 summer. So there was very little rain around. So you  
9 would not suspect it was a stormwater pipe issue because  
10 there would be no water flowing in those pipes.

11

12 Q. I see. And while you were on Charlesworth Street did  
13 you also notice that workers were at the intersection of  
14 Charlesworth Street and Waller Place?

15 A. I did.

16

17 Q. And what would you estimate to be the distance between  
18 Coburn Avenue and Waller Place?

19 A. Two hundred and - oh, 150 metres, 100 metres. Maybe  
20 100 metres, yes.

21

22 Q. I see. Perhaps so we can understand and visualise the  
23 proximity, could we please bring up exhibit 7 to Mr Bolch's  
24 statement, which is RES.0003.0002.0039. This is a video  
25 you took on 15 January, Mr Bolch?

26 A. This is correct.

27

28 Q. Can you explain what it shows? Could we please play  
29 it.

30 A. So I'm standing about halfway between Waller and  
31 Coburn and panning up and down the street, and I'm now  
32 looking at the workers there that were starting to do some  
33 excavation works, or had started, looking at the nature  
34 strip, how wet it is, water coming out of the kerb and  
35 into - or coming into the kerb from the nature strip, and  
36 there was water on both sides of the street there.

37

38 Q. I see. In that video, Mr Bolch, there were  
39 contractors visible. Which intersection were they at?

40 A. So that's at the Waller and Charlesworth.

41

42 Q. Did you approach the contractors or workers?

43 A. Yes, I did. I walked up there.

44

45 Q. Before I ask you further questions can we please bring  
46 up exhibit 6 to the statement, which is RES.0003.0002.0038,  
47 and specifically page 1. This is a photo that you took at

1 the intersection of Charlesworth Street and Waller Place?  
2 A. That's correct.

3  
4 Q. And you took that on 15 January?

5 A. Correct.

6  
7 Q. Could you please explain what you observed occurring  
8 at that intersection?

9 A. So, from my plumbing background and knowledge, just  
10 out of this particular photo there is a sewer manhole, and  
11 in the photo it's showing a trench line. So that change in  
12 soil colour there, which is probably 900mm wide, is typical  
13 backfill material that you would use over a pipe and over a  
14 sewer pipe. So you can see the natural ground probably on  
15 the lower part of that on the right-hand side, and above  
16 and over the top of the sand material is like a crushed  
17 rock material that would have been put in to build the  
18 road. It would have been road base for the asphalt to be  
19 put on, yes.

20  
21 Q. Mr Bolch, could you describe the materials that are  
22 typically used around sewer pipes in trenches?

23 A. Materials you use around sewer pipes are a material  
24 that you'd - you put around them will stop any impact or  
25 crushing of the pipe. So quite often they'll be a small  
26 aggregate, what we used to call quarter minus. Scoria is  
27 another item that's used mainly around houses, not so much  
28 in South East Water's construction. But sand is definitely  
29 a material that would be used. So there would be a base or  
30 a bedding put in, then the pipe laid, and then further  
31 material put around that pipe to protect it from any impact  
32 so it doesn't break or crack.

33  
34 Q. And are those materials typically permeable? Would  
35 they allow the flow of water?

36 A. Most certainly, yes.

37  
38 Q. Do you recall seeing the contractors pumping that  
39 excess water from the trench into a nearby stormwater pit?

40 A. Yes. You'll see the hose on the right-hand side in  
41 the kerb there. There was a pump that's outside that  
42 photo, and they had been pumping the water out of that  
43 particular trench, yes.

44  
45 Q. Did you speak to the contractors?

46 A. Yes, I did.

47

1 Q. And what did they tell you?  
2 A. They said that they were going to cut a trench across  
3 to the nearby stormwater grate that's in the kerb. The  
4 issue that they were having with it, the pit was quite  
5 shallow, so what we call an invert level, they were going  
6 to have to come up high in that particular trench to  
7 relieve any water that might build back up in that  
8 particular trench to relieve it.  
9  
10 Q. I see. So is the effect of that misalignment that the  
11 water would need to rise up through the trench before it  
12 could even reach the relief pipe?  
13 A. That's right, yes.  
14  
15 Q. I see. After seeing the state of the sewer line, what  
16 did you think?  
17 A. I didn't actually see the sewer line - the sewer pipe  
18 itself, but this particular sewer line is saturated. If  
19 you zoom right in on the photo you can see how the sand has  
20 just been running out. Like beach sand, basically. If you  
21 had water on it, it would just be running. So it was just  
22 collapsing in that particular area in the photos. So  
23 whether that --  
24  
25 Q. There's a pointer there if you want to use it.  
26 A. Where's my pointer - I'll grab the pointer, sorry. So  
27 in this particular area here where it's been the sand is  
28 just running out. So as they've excavated it hasn't held  
29 its integrity; it's just washed out because of the amount  
30 of water.  
31  
32 Q. I see. So that sandy material has been a vehicle for  
33 water to travel through?  
34 A. Yes, it certainly would. Trench flow.  
35  
36 Q. And the fact that water was coming up above the  
37 roadway did that indicate to you that the ground was  
38 significantly saturated with water?  
39 A. Yes, for water to - for that - for those trench lines  
40 to fill up with that much water to then start coming out in  
41 the road surface would mean that they are full of water and  
42 they're getting pressurised and they're looking for a  
43 relief point. In this instance it's found the centre of  
44 the road to come up because of probably the head or further  
45 up the amount of water that's behind it. So it's found a  
46 weak point and it's flowed out of there. In saying that,  
47 water doesn't just stay in the trench line. It would flow



1 either side of that into the natural ground and disperse  
2 across into nature strips and surrounding areas.

3

4 Q. I see. After inspecting Charlesworth Street did you  
5 next go to Prospect Hill Road?

6 A. I did.

7

8 Q. And what did you observe there?

9 A. Once again, there was water flowing down the kerbs on  
10 the east side - on the south side entry into Prospect Hill  
11 Road, on both sides of the road there was water flowing  
12 down the kerbs, and on the further south side of that  
13 intersection the water was coming down from that  
14 intersection, the water was coming out of the nature strip  
15 as well.

16

17 Q. Could we please bring up exhibit 10 to Mr Bolch's  
18 statement, which is RES.0003.0002.0040. Is this a video  
19 that you took of the kerbs located along Prospect Hill  
20 Road?

21 A. Yes, it is.

22

23 Q. And you took that on 15 January?

24 A. Yes.

25

26 Q. As the video is playing could you please explain what  
27 is shown?

28 A. So we're panning down on the west side - sorry, that  
29 was the east side. We are now panning over towards the -  
30 sorry, that was the south side. We are now panning over  
31 towards the west side and now we're looking back down  
32 Prospect Hill Road. I'm now walking back up along the west  
33 kerb and channel. You can see the condition of the channel  
34 there, but you can see the water running down there when  
35 I zoom in, and that's once again a constant flow of water.

36

37 Q. Do you recall speaking to the owner of 5 Prospect Hill  
38 Road at some point during your investigations?

39 A. Yes, I do.

40

41 Q. And did he tell you that the sump pump for his  
42 underground garage had been pumping more water than unusual  
43 since the beginning of December 2024?

44 A. Yes, he did.

45

46 Q. Could you explain what a sump pump is?

47 A. A sump pump is in a basement or a basement of a car

1 park, a lift well. There's many applications for them, but  
2 it's to catch any water that may enter that particular  
3 zone, because it can't flow out unless it's pumped out of  
4 that area. So you put a pump in there that'll have a float  
5 valve. When the water gets to a certain level the pump  
6 activates and pumps any water out. So the pumps don't  
7 constantly run. They only run when there's enough water  
8 gets into the pit for the float valve to activate that pump  
9 to say, "Hey, you need to move the water out of here," and  
10 that's what it does.

11  
12 Q. I see. And you recall that the owner of 5 Prospect  
13 Hill Road told you that the sump pump had been pumping a  
14 higher volume of water after the landslides?

15 A. That's correct.

16  
17 Q. Okay.

18 A. Or even prior - and prior to the land --

19  
20 Q. Prior to as well?

21 A. Yes.

22  
23 Q. Can I take you now, Mr Bolch, to 22 January. On that  
24 day did you attend a community session at the Dromana  
25 Community Hall?

26 A. Yes, I did.

27  
28 Q. And do you recall Mr Lloyd of South East Water  
29 speaking at that meeting?

30 A. Yes, I do.

31  
32 Q. And what did he say?

33 A. Mr Lloyd was reassuring the residents that they had  
34 done extensive investigations within their network and it  
35 was performing above expectations, which they do note that  
36 they have a 10 per cent loss of water across their network  
37 in water mains. So from my point I'm assuming that that's  
38 a lower level if it's performing better than unusual, yes.

39  
40 Q. Did you speak to Mr Lloyd after the meeting?

41 A. Then after that there was a - when the meeting was  
42 finished people stayed around to ask questions and so  
43 forth, and Mr Lloyd, I spoke to him about putting what we  
44 call spear pumps in to relieve water down towards the  
45 escarpment. It's a good way of removing the source of  
46 water, and I thought that was a prevalent - that maybe they  
47 should do that whilst the investigations were going on.

1  
2 Q. So, just to clarify, spear pumps extract water from  
3 the ground?  
4 A. Yes, they do.  
5  
6 Q. And how did Mr Lloyd respond after you made this  
7 suggestion or --  
8 A. Look, he took the information on board, but I haven't  
9 received any further information in regards of, you know,  
10 any action or information they were going to act on that.  
11  
12 Q. I see. Can I now take you to the end of January,  
13 specifically 31 January. On that day did a meeting of the  
14 McCrae Evacuees Residents Group occur?  
15 A. Yes, it did.  
16  
17 Q. I'm going to refer to it as MERG.  
18 A. Yes.  
19  
20 Q. You met at the McCrae Yacht Club; is that right?  
21 A. That's correct.  
22  
23 Q. And at the meeting were you and Kevin Hutchings  
24 appointed by MERG to look into the possible cause of  
25 the 14 January landslide?  
26 A. Yes, we were.  
27  
28 Q. And you were appointed given your professional  
29 backgrounds in the water industry?  
30 A. That's correct.  
31  
32 Q. What was the hypothesis at that time as to the  
33 potential cause of the landslide?  
34 A. We knew there had to be a water source from somewhere.  
35 So that was our main focus: to find out where this water  
36 had come from. Kevin had already been doing a number of  
37 investigations prior. He had been further up in  
38 Arthurs Seat looking at possible small lakes or dams in  
39 that area to see if there was any breaching or leaks and so  
40 forth. He had been down in The Boulevard. So from that  
41 point on when Kevin and I started to work together we were  
42 looking at other possibilities, and information started to  
43 follow from that point.  
44  
45 Q. I see. Did you start to look at maps and plans of  
46 local water infrastructure in McCrae?  
47 A. Yes. So then - you can - as a plumber when you're -

1 before you do any excavations or do any design work or  
2 anything in relations to plumbing and other services, but  
3 in my case plumbing, there's a facility available, online  
4 facility, Before You Dig Australia. It used to be called  
5 Dial Before You Dig, and it's had a name change. But that  
6 will supply you with information of all assets that are in  
7 the area where you want to either perform works or plan  
8 works or do design around.

9  
10 Q. I see. And what did those maps tell you specifically?

11 A. So it would show me - I was specifically looking at  
12 stormwater, sewer and water assets. So that's what  
13 I wanted to get, those asset details and evaluate them,  
14 yes.

15  
16 Q. I'll come back to how you harness those maps in a  
17 moment, Mr Bolch, but for now can I take you to  
18 14 February. Did you and Kevin go to Waller Place to look  
19 at stormwater pits that day?

20 A. Yes, we did.

21  
22 Q. And why did you go to Waller Place in particular?

23 A. Kevin had come across information that there had been  
24 a burst pipe in that area, and so that's why we started our  
25 investigation, main part of our investigation up there to  
26 look for source of water, yes.

27  
28 Q. And am I right in thinking that Waller Place is quite  
29 close to the Mornington Peninsula Freeway?

30 A. Sorry, could you just repeat that first question?  
31 I may have --

32  
33 Q. No, it's okay. Why did you go to Waller Place  
34 stormwater drains in particular?

35 A. Sorry, yes, my last answer was incorrect. We went to  
36 that area because that's where the water had been in  
37 Charlesworth and Waller and Coburn Avenue. So we went  
38 there to start looking around what was going on in that  
39 particular area. Yes.

40  
41 Q. Okay. And you wanted to look at the stormwater drains  
42 in particular?

43 A. Yes, yes.

44  
45 Q. And is that because they're close to the Mornington  
46 Peninsula Freeway?

47 A. Yes, they flow underneath the freeway, yes.

1  
2 Q. Did you and Kevin speak to the owner of 5 Waller Place  
3 that day?  
4 A. We did. Mr Cooper.  
5  
6 Q. And what did Mr Cooper tell you?  
7 A. He filled us in with a reasonable amount of  
8 information in regards to the amount of times he had been  
9 speaking to South East Water, the investigation works that  
10 had been going on, that they had been up there numerous  
11 times with leak detection equipment. He also told us about  
12 the noise that had been coming from the stormwater system  
13 that runs alongside his house. There's an easement there  
14 that carries the water and the sewer down on the south side  
15 of his property, and he was telling us how he was concerned  
16 for his house in regards to the noise because it was  
17 unusual. So that was of great - it was good information to  
18 receive to allow us to investigate things further.  
19  
20 Q. And can I clarify was the unusual noise in the sewer  
21 pipe or the stormwater pipe?  
22 A. In the stormwater pipe.  
23  
24 Q. And after you spoke to Brett did you go to the burst  
25 site with Kevin?  
26 A. Yes, I did.  
27  
28 Q. And what did you see when you inspected the burst  
29 site?  
30 A. We've seen two areas that had been excavated and then  
31 top dressed. What we call top dressed is a topsoil  
32 material put back over it and grass seed. So there were  
33 two points of area where there had been excavation works  
34 done.  
35  
36 Q. I see. And one of those excavation areas is about  
37 40 metres from the corner of Bayview and Outlook Road; is  
38 that right?  
39 A. Yes, it's - I've actually measured from the back of  
40 kerb at Outlook to the sewer manhole, where that particular  
41 excavation is, 52 metres.  
42  
43 Q. 52 metres. And at that particular part of the burst  
44 site did you notice signs of erosion?  
45 A. Yes.  
46  
47 Q. Could you please describe what you mean?

1 A. Well, especially around the cyclone fence and the post  
2 you could see a big void around that post and a washout in  
3 that particular area, yes.

4  
5 Q. Did you notice any vegetation or fallen trees?

6 A. Yes, we did.

7  
8 Q. Did the ground conditions indicate to you that it had  
9 become very wet?

10 A. When you went inside the cyclone fence area you could  
11 see a lot of washaways, soil on top of the ground where  
12 water had been flowing over a vast area.

13  
14 Q. I see. And did you identify any water infrastructure  
15 at the burst site?

16 A. Water infrastructure?

17  
18 Q. Yes. Did you locate valves?

19 A. Yes. Further down from the sewer manhole where this  
20 particular burst location or suspected burst location was  
21 there is two valves and a washout or an inground hydrant.

22  
23 Q. Could you explain what water valves are?

24 A. Water valves are put into the water mains to isolate.  
25 They can be put in there for repairs, if they need to do a  
26 repair on a section of pipe. Most water mains have a - are  
27 set up so they have a dual feed. They can come in from  
28 both sides. So if they want to shut off a section of, say,  
29 100 metres to do a repair on the main, if they've got  
30 valves either side of where they need to, they can shut off  
31 that section of main and still keep everyone else supplied  
32 with water.

33  
34 Q. I see. And could you please explain what a washout  
35 point is?

36 A. So a washout point is once again if they - say they've  
37 done repairs on a main, they will want to flush that main  
38 to make sure there's no dirty water, want to make sure  
39 they're flushing any air out of the pipes and so forth to  
40 recharge that main. Washout points are also the same  
41 design they use for inground hydrants. So the fire brigade  
42 and so forth can access water to those if there was fire in  
43 your street. They are set out at a certain distance  
44 throughout the street network so that they can refill their  
45 appliances or their trucks.

46  
47 Q. After you visited the burst site did you then cross

1 the road to look at the culvert located at The Boulevard  
2 Reserve?

3 A. Yes, we did.

4  
5 Q. Can you explain what a culvert is?

6 A. So a culvert predominantly is a concrete pipe. They  
7 vary in sizes. This particular one seemed to be around  
8 approximately - larger than just a street pipe. It was  
9 approximately 600mm in diameter.

10

11 Q. I see. And why did you want to go to that location?

12 A. The Boulevard is like a retarding basin to collect  
13 water from further upstream because of the terrain. So in  
14 heavy storm conditions it would hold water and allow it to  
15 enter that particular barrel drain, to then flow further  
16 down underneath the freeway and towards the outlet on the  
17 beach.

18

19 Q. And what did you see when you went to that particular  
20 culvert?

21 A. The culvert was very hard to access because of  
22 blackberries and shrub and so forth in there. But Kevin  
23 had been in there prior and - I remember the neighbour  
24 across the road - Kevin telling me the neighbour come  
25 across to him and said, "I wouldn't be going in there with  
26 all the tiger snakes." But it was too late, Kevin had  
27 already been in, and Kevin had indicated to me that it was  
28 quite dry, there was no evidence of any water at that  
29 point.

30

31 Q. I see. And at that point did you start to think that  
32 the water that Mr Cooper had observed in the stormwater  
33 assets likely came from the burst site as opposed to the  
34 culvert?

35 A. Correct.

36

37 Q. Okay. I'm now going to take you - sorry, I'm now  
38 going to ask you a few questions about an annotated map.  
39 Could we please go to annexure 23, which is  
40 RES.0003.0002.0053. Mr Bolch, this map shows a section of  
41 McCrae around the burst site; is that right?

42 A. That's correct.

43

44 Q. And did you cause this annotated map to be prepared?

45 A. Yes.

46

47 Q. Who helped you prepare this map?

1 A. One of my operations manager at work, Dillon. He's a  
2 little bit better on putting these sort of things together.  
3 So, under my direction of what I wanted to achieve on the  
4 map, he proceeded to do the overlays for me.  
5  
6 Q. I see. So the map was created through overlaying two  
7 South East Water maps that you obtained from Before You Dig  
8 Australia?  
9 A. That's correct.  
10  
11 Q. And one map shows the network of water mains in the  
12 area; is that right?  
13 A. That's right.  
14  
15 Q. That's indicated by the blue lines?  
16 A. That's correct.  
17  
18 Q. And the other map shows a network of sewer mains in  
19 the area, and that's indicated by the red lines?  
20 A. Yes, it's sort of pinkish colour we used for that,  
21 yes.  
22  
23 Q. And did you cause those bolded lines to be added to  
24 this map?  
25 A. Yes.  
26  
27 Q. Can you explain what each of those bold lines show?  
28 A. We just wanted to highlight because of the way - if  
29 you look at the rest of the map, they're very thin lines  
30 and a little bit harder to identify. So we wanted to  
31 identify the network of the water and the sewer, and how  
32 the water line crosses over the sewer at that particular  
33 point where the red circle is, and then wanted to align how  
34 the stormwater system integrates with both of those, that  
35 it runs down between them.  
36  
37 Q. I see. So the blue thick line is the water main  
38 network, the black lines are the stormwater network, and  
39 the pink, the sewer network?  
40 A. That's correct.  
41  
42 Q. Could we just punch in on that area, please. What did  
43 you rely on to figure out the location of the stormwater  
44 pipework?  
45 A. So once again Before You Dig online service that's  
46 available, I was able to receive the Mornington Peninsula  
47 Shire Council drainage plans, and then a few days later



1 I was able to obtain the VicRoads plans for when the  
2 freeway was built, and their network combines at the  
3 freeway at this point.  
4

5 Q. I see. Mr Bolch, you've circled a large red - sorry,  
6 there's a large red circle there on the map. Is that  
7 circling the water main pipe that you think burst?

8 A. Yes.  
9

10 Q. You've isolated that pipe based on your inspections of  
11 the burst site and your study of the South East Water maps;  
12 is that right?

13 A. Yes, that's right.  
14

15 Q. Let's call that pipe the burst pipe. That pipe sits  
16 directly above a sewer trench line; is that right?

17 A. That's correct.  
18

19 Q. So if water were leaking from the burst pipe that  
20 water could easily travel into the sewer trench line?

21 A. Yes, most certainly. The separation between those  
22 pipes is probably less than a metre, with a standard cover  
23 that you would use on the water main, and the sewer,  
24 I think the invert level was around 2.1 metres. So the  
25 pipe would have been directly below the burst pipe. So if  
26 water was leaking at that point, even at a slow rate, it  
27 would have been going down into the easiest point of  
28 travel, which would have been the sewer trench and possibly  
29 the stormwater trench. But early on you would believe -  
30 I would believe it would be going down the sewer trench.  
31

32 Q. I see. And given your reading of South East Water's  
33 maps do you know the size of the burst pipe?

34 A. That's a 150mm PVC pipe, UPVC pipe.  
35

36 Q. Is that information shown on the map?

37 A. Yes, it is.  
38

39 Q. Could you please point where that information is  
40 located?

41 A. It's saying here it's a UPVC class 12 installed on  
42 1 January 1963. So it's a 150 pipe. Class 12 is its  
43 pressure rating.  
44

45 Q. I understand. Mr Bolch, have you worked with  
46 150mm UPVC pipes before as a commercial plumber?

47 A. Yes, I have.

1  
2 Q. And in what context have you worked with them?  
3 A. Laying water mains, just general infrastructure where  
4 it's required for that sized pipe and much larger sized  
5 pipes.  
6  
7 Q. I see. And so 150mm UPVC pipes are typically used in  
8 water main networks?  
9 A. Yes, they are.  
10  
11 Q. Would it be fair to say then that you're very familiar  
12 with these pipes?  
13 A. Yes.  
14  
15 Q. Have you brought a section of pipe along with you  
16 today?  
17 A. I have.  
18  
19 Q. Could the pipe please be handed to Mr Bolch.  
20 Mr Bolch, do they ordinarily come with handles?  
21 A. No. That was something I put on for the convenience  
22 of carrying it here today.  
23  
24 Q. Mr Bolch, how did you obtain that section of pipe?  
25 A. This is just a short section of pipe that's left over  
26 from a previous job that we've done.  
27  
28 Q. And when did you obtain that section of pipe?  
29 A. Would have been back in 2022, around about then.  
30  
31 Q. And that pipe has a 150mm diameter; is that right?  
32 A. That's correct.  
33  
34 Q. And it's made out of UPVC?  
35 A. Yes.  
36  
37 Q. And, to be clear, it's not actually part of the burst  
38 pipe?  
39 A. No, it's not.  
40  
41 Q. But it is a pipe that demonstrates the size and makeup  
42 of a 150mm UPVC pipe?  
43 A. That's right. It shows you the internal diameter of  
44 the pipe, where the water would be flowing, and this is a  
45 later version of UPVC pipe. These days the pressure rating  
46 on this is called a PN12. So on the old imperial ones,  
47 pipe measurements, they used to be called a class 12.

1 These days I believe they have upgraded that to PN12. Same  
2 pressure rating, predominantly the same material. This  
3 goes through - tells you that it's watermarked, it has a  
4 licence number, it tells you it's made to Australian  
5 Standards, it tells you the date that this particular pipe  
6 was made, so that's 18/2/21, and it gives you the time, the  
7 production line that that went through. So that was at  
8 6.05 in the afternoon. So it gives you reasonable detail,  
9 it tells you 150 PVCU. So that would be pretty much the  
10 same as what was in the ground.

11  
12 Q. I see. I tender that object as an exhibit, Madam  
13 Chair.

14  
15 CHAIRPERSON: The pipe-style carry bag is exhibit CA20.

16  
17 **EXHIBIT #CA20 SECTION OF PIPE**

18  
19 MS KITTIKHOUN: Now, returning to the map, Mr Bolch?

20 A. Yes.

21  
22 Q. You mentioned earlier that the black lines showed the  
23 stormwater pits and pipework; is that right?

24 A. That's right.

25  
26 Q. And on 21 February did you physically inspect some of  
27 those stormwater pits?

28 A. Yes, I did.

29  
30 Q. And in particular you looked at that pit that is  
31 circled in red in the smaller circle?

32 A. That's correct.

33  
34 Q. And that pit is on the northern side of Bayview Road?

35 A. That's correct.

36  
37 Q. And why did you want to find and inspect that  
38 particular stormwater pit?

39 A. It was the first one that comes underneath Bayview  
40 Road. It was just for me to identify that I was in the  
41 right locations in that everything was aligning with my  
42 investigations. The two further up on left and right of  
43 that are actually the side entry kerb pits on Bayview Road,  
44 and where that - where I've done the cross-intersection the  
45 open end is the stormwater outlet or inlet from The  
46 Boulevard to transport the water in. Traditionally there  
47 would be another pit in where I've got the cross-section,

1 but I was unable to locate that. It's in the nature strip,  
2 and I would need to get permits and authority to excavate  
3 to locate that. But I would be surprised if there was no  
4 pit there.

5

6 Q. I see. So for clarity, Mr Bolch, would you just mind  
7 pointing to where you mean you couldn't find a stormwater  
8 pit?

9 A. Yes. So this particular pit here, it should be in the  
10 nature strip just above The Boulevard. So that's the entry  
11 into The Boulevard there that allows the water to flow  
12 through to go down. These are the two side entry pits that  
13 I'm talking about that are on the kerb and channel of  
14 Bayview Road, and this one's on the north side of Bayview  
15 Road.

16

17 Q. I see. And when you located that pit that's circled  
18 in red what did you see?

19 A. I prized the pit open. You can see it's got heavy  
20 concrete lids on it. Basically known as a junction pit  
21 when they have these type of lids on it. They don't need  
22 to have a grate or anything on top of them. I prized that  
23 open and noted the pit was quite clean but there was an  
24 intersecting pipe coming from the south direction, so on  
25 this side of the pit or - if I can get my bearings right -  
26 but, yes, coming out of the south side of that pit, running  
27 back up alongside towards Bayview Road and Outlook - or  
28 parallel with Bayview towards Outlook. That intersecting  
29 pipe was approximately a 300 diameter pipe, and it had a  
30 constant water flow coming out of it.

31

32 Q. How would you describe that water flow? Was it a  
33 trickle or more than a trickle?

34 A. It was much more than a trickle, but it wasn't a  
35 flooding amount of water. But it was constant flow.

36

37 Q. I see. And what did the presence of water in that  
38 pipe indicate to you?

39 A. Once again, we're in a really dry period through  
40 summer. For a water source to be continually flowing like  
41 that, I'm immediately thinking with what's gone on that  
42 there's possibly another water leak in the water main  
43 network further up that's entering either into pipework  
44 behind the kerb and channel, but there had to be a water  
45 source coming from somewhere for that to be continually  
46 running.

47

1 Q. I see. Now, on 21 February did you venture further  
2 into the burst site past the chain link fence?  
3 A. Yes, I did.  
4  
5 Q. And you located the next two stormwater pits located  
6 closer to the Mornington Peninsula Freeway?  
7 A. That's correct.  
8  
9 Q. They were both grated pits - or they both are?  
10 A. That's right.  
11  
12 Q. Could you please point to those pits?  
13 A. So that's the first one here, and that's the second  
14 one just behind the barrier railing on the freeway.  
15  
16 Q. And what did you see when you observed those pits?  
17 A. So the first pit that I've observed here when you walk  
18 in, there's a significant amount of washaway from material  
19 that's come to the surface that's covered over an area of  
20 approximately 20 or 30 metres in a radius on the downhill  
21 slope. You could see that it was evident that some water  
22 had travelled over towards that pit as well and further  
23 water had travelled down the escarpment.  
24  
25 Q. I see. Now, there are two 750mm stormwater pipes  
26 running under the Mornington Peninsula Freeway; is that  
27 right?  
28 A. That's correct.  
29  
30 Q. And, based on your conversations with Brett and the  
31 information you've obtained through your investigations,  
32 you now know that those pipes run through what was  
33 originally an open creek bed; is that right?  
34 A. That's correct.  
35  
36 Q. Okay. Is it your view that the installation of those  
37 pipes coupled with the natural topography of the land could  
38 have significantly influenced water flow patterns?  
39 A. Yes, most certainly.  
40  
41 Q. Could you explain why?  
42 A. Well, natural creek beds are where the natural water  
43 flow has been in the past. So with development and so  
44 forth a lot of those get filled in with a network of pipes,  
45 stormwater pipes, to carry that where the normal flow would  
46 be. So entering - to get - for the freeway to be  
47 constructed, obviously they needed to put the network of

1 pipes in there to bring the water from one side of the  
2 freeway to the other. So they would be filling in that  
3 natural creek bed with pipes and backfilling it with a  
4 material that would also be allowing water to travel on the  
5 outside of that network of pipes.

6  
7 Q. I see. Mr Bolch, I'm now going to ask you questions  
8 about events that occurred on 7 March. On that day did you  
9 and Kevin visit the burst site with various representatives  
10 from the council?

11 A. Yes, we did.

12  
13 Q. And did Mr Pope attend?

14 A. Yes, he did.

15  
16 Q. Do you recall sharing with the council representatives  
17 that water from the burst site likely travelled down the  
18 hillside towards the escarpment?

19 A. Yes, we did.

20  
21 Q. And during that visit did you notice that the ground  
22 at the burst site was wet again?

23 A. Yes. Approximately within three to five metres  
24 upstream the ground was quite moist and a slight pooling of  
25 water.

26  
27 Q. And what did that indicate to you?

28 A. That there was either a continual leak or a new leak  
29 had occurred at that point.

30  
31 Q. And later that day did you and your wife, Vicki,  
32 observe contractors attending the burst site?

33 A. Yes, we did.

34  
35 Q. And you spoke to a South East Water supervisor, who  
36 told you that they were repairing a minor leak in that  
37 location?

38 A. That's correct.

39  
40 Q. And on the next day, 8 March, you went back to the  
41 burst site?

42 A. Correct.

43  
44 Q. And you took photos of the burst site that day?

45 A. I did.

46  
47 Q. Could we please go to exhibit 25 of Mr Bolch's

1 statement, which is RES.0003.0002.0055, and specifically  
2 page 5. This is a photo you took, Mr Bolch?  
3 A. Yes, it is.  
4  
5 Q. Okay. Could you please describe what we're seeing  
6 here?  
7 A. So initially the cyclone fence was down further here.  
8 So with the excavation works that they undertook they  
9 needed to pull more of the cyclone fence out of the way to  
10 attend to the leak approximately in this location, and the  
11 first leak is approximately down here, the first burst. So  
12 the second attempt to repair a leak was here.  
13  
14 Q. Thank you, Mr Bolch. I'm now going to turn to some  
15 questions about testing you've undertaken at the burst  
16 site.  
17 A. Yes.  
18  
19 Q. So after weeks of investigations you wanted to gain a  
20 better understanding of the water pressures and flows at  
21 the burst site?  
22 A. Yes, I did.  
23  
24 Q. And you went to the burst site on 27 March to  
25 undertake testing for that purpose?  
26 A. Yes, I did.  
27  
28 Q. And you hooked up a hydrant tester to the washout  
29 point?  
30 A. Yes, I did.  
31  
32 Q. The same washout point that you mentioned earlier?  
33 A. Yes.  
34  
35 Q. And that is about 15 metres from the point where you  
36 suspect the water main burst?  
37 A. Yes.  
38  
39 Q. And the washout point is connected to the burst pipe?  
40 A. Yes.  
41  
42 Q. So the test would measure the flow of water and  
43 pressure - sorry, the rate of flow and pressure in that  
44 particular pipe?  
45 A. It would.  
46  
47 Q. Do you recall setting up the testing equipment with a

1 25mm opening?

2 A. Yes, I did.

3

4 Q. And why did you use that size?

5 A. I needed to get some idea of - well, my investigation  
6 was I'm not thinking that I've got a completely burst pipe  
7 at this point, I'm thinking that I've got a smaller orifice  
8 leak that's happened on the pipe. So to get some  
9 understanding of how many litres would flow through a 25mm  
10 orifice, hooking up this equipment would allow me to do  
11 that.

12

13 Q. So at the time you did not know the size of the  
14 opening in that pipe?

15 A. No.

16

17 Q. In that burst pipe. And nor do you know as you sit in  
18 the box there?

19 A. And still don't know. No.

20

21 Q. So once you fitted the testing equipment do you recall  
22 getting a reading of 750 kilopascals for the static water  
23 pressure?

24 A. Yes, I did.

25

26 Q. Can you explain what static water pressure tells us?

27 A. So that's the pressure in the pipework without flow.

28

29 Q. Without water flow?

30 A. Yes.

31

32 Q. Is that a lot of pressure?

33 A. I would think for the age of that pipe, for the  
34 infrastructure of that pipe, that that would be on the high  
35 end of reading. Most times you would think that 700 would  
36 be approximately where you would sit max.

37

38 Q. I see. And, given the amount of pressure and the age  
39 of the pipe, did you think that it may render the pipe  
40 susceptible to failing?

41 A. It could be a factor, yes.

42

43 Q. If we could please go to exhibit 26 to Mr Bolch's  
44 statement, which is RES.0003.0002.0056, specifically page 2  
45 first. Mr Bolch, is that a photo you took on 27 March?

46 A. It is.

47



1 Q. And it depicts water from the washout point flowing  
2 through your testing equipment?  
3 A. That's right.  
4  
5 Q. Can we please go back to page 1 of that document. Do  
6 you recall getting that reading, Mr Bolch, on your testing  
7 equipment?  
8 A. Yes, I do.  
9  
10 Q. Could you please explain what those readings indicate?  
11 A. So with the valve open, the 25mm valve open, I got a  
12 flow of 16.79 litres per second through the apparatus and a  
13 pressure test of approximately 590 kPa.  
14  
15 Q. I see. And do you recall calculating that a flow rate  
16 of 16.79 litres per second would equate to about  
17 60,000 litres of water per hour?  
18 A. Yes, that's correct.  
19  
20 Q. And that in turn equates to around 1.4 million litres  
21 per day?  
22 A. Correct.  
23  
24 Q. So to summarise, if that water main burst had a  
25 25mm opening, it could have been releasing about  
26 1.4 million litres of water per day into the ground?  
27 A. That's correct.  
28  
29 Q. What did you think when you calculated those figures?  
30 A. At that point I'm thinking that, well, this is  
31 significant. If this is the sort of water loss that's  
32 occurred and we don't know the timeframe other than the  
33 first reporting of water appearing in the surface on  
34 24 November to this date of the burst, that's a long period  
35 of time for water to have been saturating the hillside.  
36  
37 Q. I see.  
38 A. So it was becoming in my investigation a highly  
39 possible cause of what had transferred further down to the  
40 landscape area - the landslide area.  
41  
42 Q. I see. And, Mr Bolch, am I right in thinking that you  
43 went on to calculate the potential leak volume for two  
44 different periods?  
45 A. Yes, I did.  
46  
47 Q. One being 38 days, and that's assuming the leak was

1 between 24 November and 31 December?  
2 A. That's correct.  
3  
4 Q. And you chose those dates based on information Kevin  
5 had given to you?  
6 A. Yes.  
7  
8 Q. 24 November being the date when South East Water  
9 responded to Phil's complaint about the water on  
10 Charlesworth Street?  
11 A. Yes.  
12  
13 Q. And 31 December being the date when South East Water  
14 attended the burst site to conduct repairs?  
15 A. That's correct.  
16  
17 Q. And you calculated that if the water had been leaking  
18 through a 25mm orifice then about 54.7 million litres of  
19 water would have been released in 38 days; do you recall  
20 that?  
21 A. Correct.  
22  
23 Q. And that's about 22 Olympic-sized swimming pools worth  
24 of water?  
25 A. Correct.  
26  
27 Q. And you also calculated the leak volume for 60 days?  
28 A. Yes, I did.  
29  
30 Q. And that was based on an assumption that the leak  
31 started about three weeks before 24 November?  
32 A. Correct.  
33  
34 Q. And you calculated that a leak over 60 days would  
35 equate to 84.4 million litres of water?  
36 A. On the numbers that I was working with, yes.  
37  
38 Q. And that's about 34 Olympic-sized swimming pools?  
39 A. Correct.  
40  
41 Q. What did you think after calculating these figures?  
42 A. Well, I was starting to come to the conclusion that  
43 this was a significant event of water loss that would  
44 contribute - with the terrain, the lay of the land, that it  
45 was highly possible that the water has made its way from  
46 point A to point B.  
47

1 Q. Point A being the burst site and point B being the  
2 Morans' property?  
3 A. Correct.  
4  
5 Q. Have you sought to have these figures verified?  
6 A. Yes.  
7  
8 Q. And you did so. One source of verification was a  
9 licensed plumber?  
10 A. Correct.  
11  
12 Q. That's Mr Allard of Fair Fire Services?  
13 A. That's correct.  
14  
15 Q. He's experienced in water flow testing?  
16 A. He is.  
17  
18 Q. Did he attend the burst site on 12 April?  
19 A. Yes, I did.  
20  
21 Q. Did Mr Allard hook up his own equipment to the same  
22 washout point you had tested?  
23 A. Yes, he hooked up his calibrated equipment, yes.  
24  
25 Q. Do you recall him getting a single hydrant flow rate  
26 of 15.52 litres per second?  
27 A. Yes, I do.  
28  
29 Q. Could you explain what a single hydrant flow test is?  
30 A. Very similar to what I set up but it's a flow  
31 measurement that they use to ascertain they're going to get  
32 the correct flow for firefighting purposes. So it's an  
33 accurate record of flow of water coming out of the  
34 standpipe.  
35  
36 Q. I see. And you also sought to have your calculations  
37 verified by a consulting engineer in April of this year?  
38 A. I did.  
39  
40 Q. Mr Andrew Christofi was the engineer?  
41 A. Correct.  
42  
43 Q. And he specialises in hydraulic and fire hydrant  
44 design?  
45 A. Correct.  
46  
47 Q. Do you recall that Mr Christofi estimated, using

1 industry standard figures, that about 81.8 million litres  
2 of water could have leaked from the burst water main over a  
3 60-day period?  
4 A. Correct.  
5  
6 Q. And that's about 33 Olympic-sized swimming pools?  
7 A. That's right.  
8  
9 Q. And, to be clear, Mr Christofi did not conduct tests  
10 at the burst site himself?  
11 A. That's correct.  
12  
13 Q. He relied on information you provided him as well as  
14 assumptions and industry standard figures as to flow rates?  
15 A. That's correct.  
16  
17 Q. Okay. Mr Bolch, I'm now going to ask you to explain  
18 the burst water main theory. But before I do can I please  
19 call up exhibit 15 of Mr Hutchings' statement, which is  
20 RES.0011.0001.0016. Mr Bolch, have you seen this map  
21 before?  
22 A. Yes, I have.  
23  
24 Q. Could you please tell me what it shows?  
25 A. It shows the network of water and sewer overlay from  
26 the suspected burst site and just above that down to  
27 Point Nepean Road.  
28  
29 Q. And again are the red lines the sewer lines?  
30 A. Correct.  
31  
32 Q. And the blue, the water main lines?  
33 A. Correct.  
34  
35 Q. Okay. Mr Bolch, in general terms could you describe  
36 how you think water may have been a contributing factor to  
37 the 14 January landslide?  
38 A. So from the burst site with a leak on the pipe there  
39 that's been identified --  
40  
41 Q. Would you mind pointing to it before you go on,  
42 Mr Bolch?  
43 A. Yes.  
44  
45 Q. Thank you.  
46 A. So from this point here where we intersect it with a  
47 mark on the map earlier with the leak the - with the water

1 leaking into the ground and saturating the ground and  
2 filling the trench line, it becomes basically the highway  
3 for the water to travel to go down the sewer and across  
4 here to hit Charlesworth Street where it was bubbling up.  
5 Now, in number 1, this particular nature strip and their  
6 front yard was very wet. So the saturation or the amount  
7 of water coming down, it's obviously crossed a sideways  
8 path to make this particular area very wet, and people had  
9 noted this to council and I believe South East Water that  
10 they had some issues.

11  
12 Continuing down the sewer trench line is where we come  
13 to now Coburn Avenue and Charlesworth. This is where all  
14 the intersection on the earlier photos show that it was all  
15 broken up. The sewer line then turns and heads in a  
16 westerly direction. But the water had travelled across  
17 Coburn and into the nature strip, and then these properties  
18 here become quite wet. We're only just one property depth  
19 away from the next part of the sewer. So it's quite  
20 feasible that water was travelling through the saturated  
21 ground, re-entering the sewer system here and then  
22 continuing along around to View Point Road to where the  
23 landslip is.

24  
25 Also, the same material - the stormwater runs - the  
26 stormwater pipework runs through here, it could have also  
27 been another avenue on the outside of those stormwater  
28 pipes to travel to get through to also assist and filling  
29 and recharging the groundwater and the springwater system.

30  
31 Q. So, Mr Bolch, can I just clarify at the intersection  
32 of Charlesworth Street and Coburn Avenue we see there the  
33 sewer trench line splitting off in different directions?

34 A. Yes.

35  
36 Q. Am I correct in understanding that just because a  
37 sewer trench line veers off like that doesn't mean that  
38 water cannot jump or travel across Coburn Avenue towards  
39 Prospect Hill Road?

40 A. Yes. So the trench lines are not waterproof. The  
41 walls of them are not waterproof. So as they're filling up  
42 with water, water is travelling either side of those into  
43 the natural ground. So the saturation continues on through  
44 that. I think if it hadn't been doing that you probably  
45 would have seen water coming up - in my view you would have  
46 seen water a lot earlier. So it was allowing the ground to  
47 saturate in that whole area and become - to the point where

1 it become just full, and the only thing the water could do  
2 is - when it's to that point is come to the surface. So  
3 that's why we're seeing nature strips so wet, we're seeing  
4 roadways so wet, and a continual flow of water further  
5 downstream at the landslip.

6  
7 Q. So to summarise, Mr Bolch, do you believe that water  
8 travelled from the burst site down towards the landslide  
9 site through a combination of trench flow and ground  
10 saturation?

11 A. Yes, I do. Yes.

12  
13 Q. Mr Bolch, have you sought to obtain information from  
14 the council and South East Water in the last few months in  
15 relation to water infrastructure?

16 A. Yes, I have.

17  
18 Q. What have you requested from the council?

19 A. Council, I went to their Somerville office and logged  
20 an enquiry to find their maintenance records for the  
21 stormwater system in that localised area, and I had been  
22 informed from a previous meeting with council at our MERG  
23 meetings that the network is looked at every 12 months and  
24 maintenance is carried out within the network. So  
25 I indicated then would those records be available, and so  
26 that's why I logged the enquiry.

27  
28 Q. Have you received those records that you requested?

29 A. No. A number of weeks went by, and then I, once again  
30 in another meeting, was told to direct that enquiry back to  
31 one of the council representatives and the McCrae recovery  
32 email that the council had set up. Another couple of weeks  
33 went by. I asked again about that information. Another  
34 couple of weeks went by. With frustration, I asked again  
35 about that information - no, sorry, I didn't ask for it;  
36 I received an email in regards to saying that I would need  
37 to request an FOI but the council would pick up the cost of  
38 that.

39  
40 Q. I see. And did you also ask for information from  
41 South East Water in relation to water infrastructure?

42 A. Yes. I went down a similar path. I had a list of  
43 questions I sent to South East Water, asking them if they  
44 could provide information. Emails kept going back and  
45 forth, back and forth, which was very frustrating, to the  
46 point then where I lodged a complaint with the Ombudsman.  
47 Then the Ombudsman were involved with emails going back and

1 forth. Council then - sorry, South East Water then started  
2 to contact me a bit more frequently again in regards to  
3 that, to the point where it finally got to that I would  
4 have to lodge an FOI for any information that I was  
5 seeking. There was points where they said they couldn't  
6 supply answers to all the questions. I said, "Could you  
7 just answer some of them," but that information was never  
8 provided. So the FOI that - at this stage we were - the  
9 MERG group were working together. So Richard Bendell, he  
10 ended up lodging the FOI on behalf of all of us.

11  
12 Q. I see. So you didn't separately lodge an FOI request?

13 A. No. We were that far down the track by this stage  
14 there was no sense in - yes, we were past the point of  
15 that. So we just waited for the information to come to one  
16 person.

17  
18 Q. I see. So South East Water did ask you to or invite  
19 you to put forward an FOI request?

20 A. Yes, they did.

21  
22 Q. And you decided not to because you were content with  
23 proceeding with Mr Bendell's FOI request?

24 A. Yes.

25  
26 Q. And did Mr Bendell receive the documents pursuant that  
27 that FOI request?

28 A. He received those just last Friday gone, yes.

29  
30 Q. Mr Bolch, to date have you identified or been advised  
31 of any alternative source of water that could reasonably  
32 explain the water flows observed in McCrae in the lead-up  
33 to the 14 January landslide?

34 A. Been offered no other source of water.

35  
36 Q. So the burst water main is the only plausible source  
37 of water you have identified to date?

38 A. That would be my opinion, yes.

39  
40 Q. Mr Bolch, thank you for your evidence. They are the  
41 matters that I wanted to address with you in the course of  
42 this examination. But before you leave the box is there  
43 anything that you would like to convey to Madam Chair?

44 A. Yes, I do, thank you. I've prepared just a little  
45 statement, and I'll probably need to read it so I don't get  
46 lost. Firstly, I would like to express my sincere thanks  
47 to Madam Chair, Renée Enbom, and to the entire board of

1 inquiry. Your compassion and awareness when engaging with  
2 our community has not gone unnoticed. On behalf of  
3 the impacted residents, I thank you for your continued  
4 interest and support and empathy throughout the process. A  
5 special thanks to Rhyse and Angela and Zoe as well.  
6 They've been exceptional to work with, and they've been  
7 very patient with me.

8  
9 I'd also like to acknowledge the State Government,  
10 including the local member Tom McIntosh, the minister Nick  
11 Staikos and the Honourable Premier Jacinta Allan for  
12 establishing and funding this inquiry. Without that we  
13 wouldn't have had a platform. Us residents would have been  
14 left with no voice. We would have been left powerless with  
15 no avenue to seek answers or accountability.

16  
17 I would also like to thank my family, friends and  
18 residents for their support.

19  
20 In closing, I also ask all parties to approach this  
21 situation with honesty and empathy, and commitment to a  
22 long-term solution. This is not just a technical or  
23 bureaucratic issue. It is deeply human, with real impacts  
24 on people's homes, families and futures. Thank you again  
25 to the board for giving us the platform to speak and for  
26 listening. Thank you.

27  
28 MS KITTIKHOUN: Thank you, Madam Chair. I have no further  
29 questions.

30  
31 CHAIRPERSON: Thanks very much for your evidence,  
32 Mr Bolch. I'll just ask counsel if there are any  
33 questions. And they're all shaking their head, which means  
34 there are no questions. Thank you very much for coming.  
35 Thank you very much for the enormous amount of work that  
36 you have done, which is of great assistance to the inquiry.  
37 It's very much appreciated. So thank you very much for  
38 that. And that completes your evidence.

39 A. Great. It's been my pleasure. Thank you.

40  
41 <THE WITNESS WITHDREW

42  
43 MR COSTELLO: Madam Chair, Mr Di Stefano is going to take  
44 the next witness. Would you like that witness sworn or  
45 would you prefer to take the break now?

46  
47 CHAIRPERSON: Let's have a break now.



1  
2 MR COSTELLO: Yes. Thank you.  
3

4 **SHORT ADJOURNMENT**  
5

6 CHAIRPERSON: Mr Di Stefano.  
7

8 MR DI STEFANO: Madam Chair, the next witness is Paul  
9 Willigenburg, who I call.  
10

11 <PAUL WILLIGENBURG, affirmed:  
12

13 <EXAMINED BY MR DI STEFANO:  
14

15 CHAIRPERSON: Take a seat, Mr Willigenburg. I'm going to  
16 stand for a little while due to a back issue.

17 Mr Di Stefano is now going to ask you some questions.  
18

19 MR DI STEFANO: Thank you, Mr Willigenburg, if you could  
20 just for the transcript please state again your full name?  
21 A. Paul Willigenburg.  
22

23 Q. And you live at an address that's known to the  
24 inquiry?

25 A. Yes.  
26

27 Q. What's your current occupation?

28 A. My wife and I are retired.  
29

30 Q. Yes. Thank you. You're attending today pursuant to a  
31 notice to attend that was served on you; is that correct?

32 A. That's correct.  
33

34 Q. And have you had a witness statement prepared for you?

35 A. I have.  
36

37 Q. Can a copy of that witness statement and its exhibits  
38 please be provided to Mr Willigenburg. Mr Willigenburg, is  
39 the content of that witness statement true and correct?

40 A. Yes, it is.  
41

42 Q. And you're happy for that to be your evidence provided  
43 to the inquiry?

44 A. I am.  
45

46 Q. Can you please sign and date the last page of that  
47 witness statement, please.

1 A. The date?

2

3 Q. The date today is 14 May. Thank you. Madam Chair,  
4 I tender that statement and its exhibits, please.

5

6 CHAIRPERSON: The statement of Paul Willigenburg is  
7 exhibit CA21, and the documents referred to in that  
8 statement are also part of CA21.

9

10 **EXHIBIT #CA21 STATEMENT OF PAUL WILLIGENBURG AND THE**  
11 **DOCUMENTS REFERRED TO THEREIN.**

12

13 MR DI STEFANO: Thank you, Chair. Mr Willigenburg, you  
14 are one of the registered owners of unit 3/613 Point Nepean  
15 Road; is that correct?

16 A. That's correct.

17

18 Q. And when is it that you purchased that property?

19 A. 2006.

20

21 Q. And you own it with your wife?

22 A. That's correct.

23

24 Q. And previously did the two of you reside at that  
25 property since you purchased it?

26 A. Yes, we did.

27

28 Q. Can I please have the first exhibit to  
29 Mr Willigenburg's statement brought up, which is document  
30 RES.0010.0001.0001. Is that a photograph of looking up at  
31 your property, Mr Willigenburg?

32 A. It is.

33

34 Q. Thank you. Could you just explain - so we're facing  
35 away from the beach right now, looking up?

36 A. Yes, we are. We're looking up the escarpment here.

37

38 Q. Yes.

39 A. Yes.

40

41 Q. And if you could just identify which of the buildings  
42 that we're looking at is unit 3, your property?

43 A. So where the red car is.

44

45 Q. Yes.

46 A. That's our property.

47

1 Q. Yes. And at the back edge, past that building, that's  
2 Penny Lane?  
3 A. There is a laneway there, yes.  
4  
5 Q. So that's the continuation, the wraparound of  
6 Penny Lane from Point Nepean Highway?  
7 A. Correct. That's correct.  
8  
9 Q. And what's the building behind that?  
10 A. That was a property that was built a number of years  
11 ago by the D'Helin family.  
12  
13 Q. Yes. And do you know the address of that property?  
14 A. Not off the top of my head, no.  
15  
16 Q. No, that's okay. It's a View Point Road address,  
17 though?  
18 A. Yes, it is.  
19  
20 Q. Yes.  
21 A. Yes.  
22  
23 Q. And up to the left you can just see the peak of the  
24 house?  
25 A. Yes.  
26  
27 Q. Do you recognise that property?  
28 A. Yes.  
29  
30 Q. And which is that?  
31 A. That's 10-12 View Point Road.  
32  
33 Q. Yes. Thank you. And would you mind - so we can see  
34 that the property, unit 3, your property, is a - it's a  
35 two-storey townhouse; is that correct?  
36 A. That's correct.  
37  
38 Q. And was it just you and your wife that lived there?  
39 A. At one point our son Christopher lived with us for a  
40 few years.  
41  
42 Q. And when was that?  
43 A. He was there from about 2019 to 2023.  
44  
45 Q. Yes.  
46 A. 2022, sorry.  
47

1 Q. Could I bring you to the day of 14 November 2022. You  
2 were to travel for a week's holiday to Tasmania that day?  
3 A. That's correct.  
4  
5 Q. And you were up early because you were flying out of  
6 Melbourne airport?  
7 A. That's right.  
8  
9 Q. I'm sure it was a bit of a mad rush?  
10 A. Yes - we do things early so we don't have to rush  
11 around. Yes.  
12  
13 Q. And did you notice anything unusual that morning while  
14 you were getting ready?  
15 A. It was raining a lot.  
16  
17 Q. Yes.  
18 A. And we had only been awake five minutes or so and we  
19 heard a loud noise at the back of the property. Didn't  
20 really know what it was, so we got up and went downstairs  
21 to the back lounge and opened the sliding doors onto the  
22 back garden and had a look. We couldn't see anything, so  
23 we basically just went back to organising our trip,  
24 basically.  
25  
26 Q. Yes. And when you say "the back of the property"  
27 I assume you mean the Penny Lane side of the property?  
28 A. Yes, that's right.  
29  
30 Q. And you said it was a loud noise. Could you explain  
31 to the chair what that noise sounded like or was?  
32 A. Yes, it was a cracking noise. It sounded like a tree,  
33 a large branch from a tree had snapped off.  
34  
35 Q. Yes.  
36 A. It didn't last for long, but it was very loud.  
37  
38 Q. Yes.  
39 A. But we didn't see anything. The rain was still coming  
40 down at that point.  
41  
42 Q. And did you then head off on your trip?  
43 A. Yes, we did. Yes, we drove up to Tullamarine, and off  
44 we went.  
45  
46 Q. And you flew out that day, did you?  
47 A. Yes, we did.

1  
2 Q. To Tasmania?  
3 A. Yes, yes.  
4  
5 Q. What occurred on the next day, on Tuesday,  
6 15 November?  
7 A. Yes, we were in Launceston and we'd just organised our  
8 hire car to drive to Freycinet and we got a call from our  
9 son.  
10  
11 Q. This is Christopher?  
12 A. This is Christopher, yes. And - to tell us that there  
13 had been a landslide.  
14  
15 Q. Yes.  
16 A. And it had impacted the rear of the property and there  
17 were all sorts of things going on. You know, this was a  
18 little bit later than the event happened, but - to be  
19 honest, we weren't really taking in - taking it all in,  
20 what he was saying, but basically they were okay,  
21 Christopher and the dog. So, yes, he gave us a bit of  
22 information about the SES and instructions that he had been  
23 given to quit the property and - yes. So he sounded very,  
24 very stressed at the time when he called me.  
25  
26 Q. Yes, understandably. Did he describe what he had seen  
27 occur? You said a landslide that had impacted into the  
28 property, but did he describe where it commenced?  
29 A. Yes. So there was a lot of mud, debris, a lot of  
30 water flowing down the slope. The fence - the back fence  
31 was basically destroyed. A lot of vegetation had come down  
32 into the property next door and also into our property.  
33  
34 Q. And which property is that, sorry?  
35 A. So that would have been 2 Penny Lane.  
36  
37 Q. Yes.  
38 A. So nothing had impacted our house at all, but it was  
39 getting closer. With the water coming down the hill, it  
40 was moving the flow towards the property. So Christopher  
41 and a neighbour tried to make sure that it didn't actually  
42 reach the house.  
43  
44 Q. So did he describe water to you?  
45 A. Yes, lots of water. Yes, lots of water, lots of mud.  
46  
47 Q. Yes. That's what he said?

1 A. Yes, yes.

2

3 Q. And did you say that he - did he describe that the  
4 flow was still moving?

5 A. Yes, he did.

6

7 Q. Did he send you any images or videos of what he had  
8 seen or what had happened that morning?

9 A. Yes, he did. There's a video that he shot at the time  
10 and a couple of photographs where he basically just showed  
11 us - basically just so that we would get used to what we  
12 were going to see when we finally got home so it wouldn't  
13 be too much of a shock. But the video was a bit scary.

14

15 Q. Yes. Well, if you're happy to, I'll put that on the  
16 screen?

17 A. Yes.

18

19 Q. It's RES.0010.0001.0002, please. So that's the back  
20 fence of your property?

21 A. Yes, yes.

22

23 Q. And obviously the video's on its side?

24 A. Mmm. But you can see the water, there's a steady flow  
25 of water coming down the slope.

26

27 Q. Yes.

28 A. And mud.

29

30 Q. So if the video was the right orientation, the top  
31 right-hand corner, is that the D'Helins' property?

32 A. Yes.

33

34 Q. Yes. And where the slide appears to have emanated  
35 from is within the boundary of 10-12 View Point Road?

36 A. Yes, that's correct.

37

38 Q. Yes. Thank you. And are you aware whether  
39 Christopher had any contact with members of the council  
40 after that slide occurred on that day?

41 A. Not on that day. Were basically the emergency  
42 services that he spoke to and he was basically told, you  
43 know, "Grab some clothes and grab some stuff, and you have  
44 to leave the property." So he went to stay with his  
45 brother in Somerville.

46

47 Q. Yes. So he was told he had to leave the property, was

1 he?  
2 A. Yes.  
3  
4 Q. And do you recall him being given an emergency order?  
5 A. He was given an emergency order; that's correct.  
6  
7 Q. Sorry, did he tell you about that?  
8 A. Yes, he did.  
9  
10 Q. Did he send you a photo of the emergency order he had  
11 received?  
12 A. Yes.  
13  
14 Q. Can I please have a copy of RES.0010.0001.0003 on the  
15 screen, please. Do you recognise this as the emergency  
16 order that he had received?  
17 A. Yes, that's the document. Yes.  
18  
19 Q. And can you see there at the point 1.2 it says,  
20 "Provide evidence of soil stabilisation on the land to the  
21 satisfaction of the municipal building surveyor"?  
22 A. Yes.  
23  
24 Q. Christopher sent you a copy of this by text message on  
25 that day?  
26 A. Yes, yes.  
27  
28 Q. Did you - when you saw that "provide evidence" part of  
29 that statement did you understand that to refer to your  
30 land?  
31 A. I had no idea.  
32  
33 Q. Yes. Were you aware of any unstable soil on your  
34 land?  
35 A. Other than what had come in on that morning, that was  
36 basically it.  
37  
38 Q. Yes. And are you aware of who it was from the council  
39 that provided this document to Christopher? Did he tell  
40 you?  
41 A. No, I don't recall.  
42  
43 Q. Yes. Do the names Benjamin Essing or Andrew Joseph  
44 ring a bell?  
45 A. Yes. Mr Essing is somebody who we began to have  
46 contact with when we returned from Tasmania.  
47

1 Q. Yes.  
2 A. And Mr Joseph had a position of some - a resilience  
3 coordinator.  
4  
5 Q. Yes.  
6 A. Because he organised a meeting of the local residents  
7 on the lane - on Penny Laneway the next day.  
8  
9 Q. Yes.  
10 A. I never met Mr Joseph or Mr Essing, but --  
11  
12 Q. You have never met them in person yourself?  
13 A. No, I haven't. No, I haven't. No.  
14  
15 Q. Not then, not since then?  
16 A. No.  
17  
18 Q. You referred to a meeting a moment ago. When did you  
19 hear about this meeting?  
20 A. Christopher told us. So we were in contact with him  
21 every day while we were way, and he told us that he was  
22 advised that a meeting would be held out the front of  
23 2 Penny Lane and local residents - affected residents would  
24 be invited to that, and there would be members of the SES,  
25 and people from the Mornington Peninsula Shire would be  
26 there as well.  
27  
28 Q. Yes. And did Christopher tell you that - did he phone  
29 you after that meeting, if he attended the meeting?  
30 A. Yes, he did.  
31  
32 Q. And did he give you an explanation that - well,  
33 I withdraw that. Did he explain to you what had been told  
34 to him about the cause of the landslide?  
35 A. No explanation was given as to cause of it.  
36  
37 Q. Yes.  
38 A. But there was some discussion about what might be done  
39 to fix the situation.  
40  
41 Q. Yes. Do you recall that he - do you recall him  
42 mentioning an irrigation system at 10-12 View Point Road,  
43 that being discussed?  
44 A. Yes, that was mentioned at the meeting.  
45  
46 Q. Yes. And do you recall anything about that?  
47 A. Other than it was suggested on the day that there had



1       been an initial landslide on the Monday.

2

3       Q.    Yes, the 14th?

4       A.    Yes.  And it was suggested that that initial landslide  
5       had damaged the irrigation system on the slope and a lot of  
6       additional water had been released on that morning.

7

8       Q.    Yes.  And do you recall whether Christopher told you  
9       who from the shire attended the meeting?  You said  
10      Mr Joseph a moment ago, but was there anyone else that he  
11      mentioned to you?

12      A.    Yes, so definitely Mr Joseph.  I believe Benjamin  
13      Essing was there.  Claudio Flores perhaps as well, the MBS,  
14      would have been there.

15

16      Q.    Yes.  What did you - you were still in Tasmania at  
17      this point when he told you that?

18      A.    That's correct.

19

20      Q.    And what did you proceed to do, aside from, hopefully,  
21      as best you could, relax on your holiday, in respect to the  
22      landslide?

23      A.    Well, Christopher made it clear to us that we weren't  
24      going to be going home.  That became very evident after a  
25      couple of days, that that wasn't going to happen.  So  
26      I contacted our insurer.

27

28      Q.    And who's that?  Which was that, which insurer?

29      A.    That was CHU.

30

31      Q.    Yes.

32      A.    And asked them if I - I explained to them what had  
33      happened, and I asked them would it be okay if I started to  
34      look around for alternative accommodation for the three of  
35      us.

36

37      Q.    That's you, Christopher and your wife?

38      A.    Yes.

39

40      Q.    Yes.  And, sorry, CHU, is that your insurer or the  
41      insurer for the body corporate?

42      A.    For the body corporate.

43

44      Q.    Yes.

45      A.    Yes, yes.  So they agreed, and we began to contact  
46      local real estate agents.  But it was at that point my wife  
47      reminded me that Mr Ben Wells, who lived at 3 Penny Lane at

1 that time, was the property manager for 607 Point Nepean  
2 Road and I should ring him, and the house was available.  
3 So we had a discussion about what the rent might be.  
4 I advised that back to the insurance company. And so  
5 whilst we were away we made those arrangements. So, you  
6 know, I spent quite a lot of time on the telephone talking  
7 to different people about all those issues. But by the  
8 time we got to the end of that week, the Friday, we had  
9 organised the accommodation at 607, and while - a couple of  
10 days before we came home Christopher got the keys and he  
11 began to move stuff from 613 Point Nepean Road into 607  
12 Point Nepean Road, so --

13  
14 Q. Can - yes. Thank you. Sorry.

15 A. That's okay.

16  
17 Q. Can you explain for the chair where 607 Point Nepean  
18 Road is vis-à-vis 613 Point Nepean Road?

19 A. Yes, so it's basically - we have a block of four -  
20 there's a block of four units - five units in the body  
21 corporate, and 607 is basically heading back down the  
22 highway towards Dromana but within 150 metres of the  
23 driveway of our property.

24  
25 Q. Yes. So am I right that it's your block of units?

26 A. Yes.

27  
28 Q. Then there's number 2 Penny Lane?

29 A. Yes.

30  
31 Q. And then across Penny Lane itself there is 607  
32 Point Nepean?

33 A. Correct. That's right.

34  
35 Q. And directly behind 607 up the hill is number  
36 3 Penny Lane?

37 A. Correct.

38  
39 Q. And that was Ben Wells' - at that time that was Ben  
40 Wells' property?

41 A. Ben Wells', that's right.

42  
43 Q. Yes. Thank you. So on your return from Tasmania you  
44 moved into 607 Point Nepean Highway?

45 A. Yes.

46  
47 Q. Did Christopher send you any additional images of

1 your - of 613, of unit 3/613?  
2 A. I'm sure he did. We have lots of photographs of that  
3 area, but, yes, I'm pretty certain that he did.  
4  
5 Q. Can I please have exhibit 4, which is  
6 RES.0010.0001.0004. Do you recognise this photo?  
7 A. Yes, I certainly do.  
8  
9 Q. So this was a photo taken by Christopher?  
10 A. Yes.  
11  
12 Q. And sent to you while you were still in Tasmania?  
13 A. Yes.  
14  
15 Q. And this was a few days after the landslide had  
16 occurred?  
17 A. Yes.  
18  
19 Q. And can you explain for the chair the orientation of  
20 where we're looking right now? Are we looking towards  
21 Penny Lane?  
22 A. Yes. Yes, you're looking towards Penny Lane. So  
23 beyond the fence, the fence that's still standing --  
24  
25 Q. Yes. The fence to the left?  
26 A. Yes. Well, the fence - no, the fence straight ahead  
27 of you.  
28  
29 Q. Sorry, yes, yes.  
30 A. So the fence straight ahead of you, behind that is  
31 Penny Lane, which is six to eight metres - supposedly six  
32 to eight metres wide, and then really you're looking at the  
33 escarpment going up.  
34  
35 Q. Yes, up to the left?  
36 A. Up to the left, that's correct.  
37  
38 Q. And that's the dirt flow and the debris flow that  
39 pushed down your fence into your property?  
40 A. Yes. Yes. It actually brought down into the property  
41 next door, into 2 Penny Lane, a whole tree.  
42  
43 Q. Yes.  
44 A. So the whole tree came down.  
45  
46 Q. And 2 Penny Lane is to the left of this photograph?  
47 A. Correct. That's right.

1  
2 Q. On your return - can you remember approximately how  
3 long you were in Tasmania for?  
4 A. Seven days.  
5  
6 Q. Yes. So you returned a week later, around  
7 21 November?  
8 A. Yes.  
9  
10 Q. And did you reach out to the council or did they reach  
11 out to you? Did you have contact with the council in that  
12 period?  
13 A. Yes, I began to make contact with the council.  
14  
15 Q. Yes. And what were you concerned about?  
16 A. I wanted to have a bit of an understanding from them  
17 what the next steps were going to be, what was going to  
18 happen, when it was going to happen, and I basically just  
19 wanted to set up a communication process between them and  
20 myself, and get to understand who I'd be dealing with,  
21 which individuals did what in the council. And that  
22 process started pretty well, I thought, and continued to be  
23 very positive in the early weeks, that we were getting lots  
24 of communication backwards and forwards, so - and we  
25 understood very early in the piece, early December, that  
26 there were discussions taking place about some sort of  
27 temporary measure that might allow us to return back to our  
28 property.  
29  
30 Q. Yes. Can I have RES.0010.0001.0005 brought up,  
31 please. Do you recognise this as an email from Mr Essing?  
32 A. Yes.  
33  
34 Q. To you?  
35 A. Yes.  
36  
37 Q. And can you see there it's copied to Claudio?  
38 A. Yes, that's right.  
39  
40 Q. And you can see in the second paragraph there it says,  
41 "To date, I or Claudio Flores, currently the acting  
42 municipal building surveyor, have not received a  
43 geotechnical report from the geologist/geotechnical  
44 engineer for the landslip"?  
45 A. Yes.  
46  
47 Q. And halfway - in the second last paragraph, second

1 sentence, it says - well, it's actually a part of the first  
2 sentence, "Claudio and I will review the geotechnical  
3 report once it has been submitted to the shire for review  
4 so that it substantiates whether or not the affected  
5 properties are safe and residents may return." And the  
6 last paragraph, "Once we receive the geotech report for the  
7 landslip we will be in contact with you and the other  
8 affected owners and reveal when a copy of information  
9 pertaining to the report may be distributed to your  
10 insurers, independent geotechnical engineer engaged"?

11 A. Yes.

12  
13 Q. So at that point - this is in early December - what  
14 did you understand to be the process that was going to be  
15 undertaken?

16 A. Well, I understood that there would have to be some  
17 technical reviews of the general area and recommendations  
18 made by experts as to how the process would proceed. As we  
19 were being communicated with, I wasn't unduly concerned.  
20 We were settled into the rental property, and a process  
21 appeared to be underway. So - and it was December 1, so we  
22 were getting closer and closer to the Christmas period. So  
23 I was a little bit - the only thing I was really concerned  
24 with was that if something was going to be done it was  
25 going to have to be done within the next couple of weeks to  
26 allow us to have any chance of getting back into the house  
27 for the Christmas period. So, other than that, I wasn't  
28 overly concerned, to be honest.

29  
30 Q. Yes. And did you ever talk to anyone from the council  
31 about whether you were required to do anything in terms of  
32 stabilisation of soil?

33 A. Yes. I was confused about the emergency order, I have  
34 to say, because it suggested to me that I had to do  
35 something.

36  
37 Q. Yes.

38 A. I wasn't quite sure why that would be the case. We  
39 hadn't done anything. So, yes, I did ask about that, and  
40 he explained that we weren't having to do anything  
41 ourselves.

42  
43 Q. Yes. And, sorry who, was the he that you spoke to?

44 A. To Claudio, Claudio Flores.

45  
46 Q. Yes. Thank you. Could I have the seventh exhibit  
47 brought up, which is RES.0010.0001.0007, please. Thank

1 you. So you can see that this is a further email from  
2 Mr Essing to you?  
3 A. Yes.  
4  
5 Q. Copied to Mr Flores?  
6 A. Yes.  
7  
8 Q. And in this email Mr Essing states that the council  
9 have just received a copy of the geotechnical reports from  
10 the geologist that was initially engaged by the shire to  
11 report on the landslip, and also that an independent report  
12 has been received from the owner of 10-12 View Point Road.  
13 That would have given you some comfort, I assume?  
14 A. It did. It did.  
15  
16 Q. And what did you think at this point, having received  
17 this email, about when you were likely to be back in your  
18 home and --  
19 A. Well, it was now 7 December. So the likelihood of us  
20 returning to the house before the Christmas period seemed  
21 unlikely at this stage. So we basically had accepted that  
22 as the situation we were in, and we just thought that what  
23 was more important was that there was a process beginning,  
24 and our view was we just have to let them get on with it,  
25 and, as I said earlier on, we weren't unduly concerned at  
26 this point. It had only been two weeks, so - the area was  
27 a mess, there was a lot of damage, and so we did understand  
28 it was going to take a while to create a plan.  
29  
30 Q. Yes. And do you see down the second paragraph it  
31 states, "I am unable to provide any copies of these reports  
32 due to privacy/legal reasons at this point in time"?  
33 A. Yes.  
34  
35 Q. Did you ask for those reports prior to that time?  
36 A. Yes, I did.  
37  
38 Q. Yes. And was that on the phone or by email, as best  
39 you can recall?  
40 A. On the phone.  
41  
42 Q. Yes. And did you contact Mr Flores or Mr Essing after  
43 receipt of this email?  
44 A. I contacted Mr Flores.  
45  
46 Q. Yes. And what did you contact him about?  
47 A. I was a bit concerned that we weren't able to get any

1 copies of the reports, and I was a bit concerned about the  
2 comment about "legal reasons". It just seemed to me that  
3 we were heading into a situation where that perhaps the  
4 availability of the Mornington Peninsula staff to be able  
5 to speak to me was going to be withdrawn.  
6

7 Q. Yes. You were worried about communication being cut  
8 off?

9 A. Correct.

10

11 Q. And in one sense it was being cut off because you  
12 weren't being provided with the reports?

13 A. That's right.  
14

15 Q. And you emailed Mr Essing about this?

16 A. I did.  
17

18 Q. Were you in contact with other residents around that  
19 time as well?

20 A. Yes. I had discussions with the D'Helins, Ben and  
21 Ann Wells, we had discussions, the McLeans from  
22 2 Penny Lane.  
23

24 Q. Yes.

25 A. A lot of discussion about lots of things.  
26

27 Q. Yes.

28 A. And one of the difficulties at that time was that a  
29 lot of people - and it's still the case even today - a lot  
30 of people have lots of opinions about lots of things. So  
31 I would have said as we headed towards the Christmas period  
32 my wife and I were reasonably comfortable with everything  
33 but becoming more and more uncomfortable as we had  
34 discussions with other people.  
35

36 Q. Yes.

37 A. Who had all these different views about "maybe you  
38 should be doing this", "maybe they should be doing that".  
39 So very confusing time, to be honest.  
40

41 Q. Yes. I can understand that. Could I have exhibit 8  
42 brought up, please, which is RES.0010.0001.0008. This is  
43 an email that you sent to Mr Essing?

44 A. Yes.  
45

46 Q. On 20 December?

47 A. That's correct.

1  
2 Q. So we're getting right up towards Christmas?  
3 A. Yes.  
4  
5 Q. And in it you're effectively asking for an update?  
6 A. That's exactly what I was doing, yes.  
7  
8 Q. And you say in the third line, "As I mentioned on  
9 Friday, there are a number of other residents who are  
10 anxious for the slope to be made safe"?  
11 A. That's right.  
12  
13 Q. Is that a reference to the conversations that you were  
14 just discussing in general terms with me?  
15 A. That's correct, yes.  
16  
17 Q. Thank you. And did you receive an email from Mr Wells  
18 the following day?  
19 A. I believe I did, yes.  
20  
21 Q. Yes. Can I have a copy of that brought up, please.  
22 That email is exhibit 12, I believe. I'm sorry, I withdraw  
23 that. It's exhibit 10, which is RES.0010.0001.0010. So  
24 you can see at the top of that email chain is an email to  
25 you?  
26 A. M'hmm.  
27  
28 Q. And that's from Ben Wells?  
29 A. Yes.  
30  
31 Q. And that forwards on an email from Mr Essing?  
32 A. That's right.  
33  
34 Q. To Mr Wells, copied to Mr Flores?  
35 A. Yes.  
36  
37 Q. On 20 December?  
38 A. Yes.  
39  
40 Q. And you can see there that in the body of that email  
41 it describes three stages of work?  
42 A. Yes.  
43  
44 Q. Which are pending review by Cardno, who were the  
45 geotechnical engineers engaged by the shire?  
46 A. That's correct  
47



1 Q. And you can see there that there were stage 1 works  
2 proposed for the Christmas/New Year break consisting of  
3 clearing vegetation to Penny Lane to make way for four  
4 tonne of a rock berm within the 10-12 View Point Road  
5 property to stabilise the soil?  
6 A. Yes.  
7  
8 Q. And then a stage 2, which is the construction of a  
9 gabion wall in early 2023, subject to planning, and the  
10 removal of debris on the slope; and then stage 3 was  
11 long-term stabilisation over the rest - over the rest of  
12 2023, the first quarter of 2023 in dry conditions?  
13 A. That's correct.  
14  
15 Q. Did seeing that three-stage plan give you some  
16 comfort?  
17 A. Yes and no. It annoyed the hell out of me.  
18  
19 Q. Can you explain?  
20 A. Because I didn't quite understand why a neighbour was  
21 receiving this sort of detailed information and we weren't.  
22  
23 Q. Yes.  
24 A. So I had to hear about this from a neighbour. As  
25 I said to you before, my wife and I had basically  
26 understood that very little was going to happen before the  
27 Christmas period and had settled into the fact that that  
28 was the case. And then on 20 December we got this.  
29  
30 Q. Yes.  
31 A. So I was a bit annoyed.  
32  
33 Q. So you were surprised that you hadn't received this  
34 directly yourself?  
35 A. That's right.  
36  
37 Q. And, without meaning to jump ahead, did this three  
38 stages of works ever occur?  
39 A. No.  
40  
41 Q. And you received this email in December of 2022?  
42 A. Correct.  
43  
44 Q. And it's now 2025?  
45 A. Yes.  
46  
47 Q. Over the next year - over the beginning of the next

1 year you repeatedly made contact or attempted to make  
2 contact with the council?  
3 A. I did.  
4  
5 Q. How did you try to do that?  
6 A. I've tried ringing, and a number of emails. We  
7 tried - one of our neighbours had contact with a local ward  
8 councillor. So we tried through that ward councillor to  
9 make contact with the shire. We contacted our local state  
10 member. We contacted our federal member. So just about  
11 any way - every way you could possibly imagine we tried to  
12 knock the wall down, basically, to get some information.  
13 And didn't get anywhere.  
14  
15 Q. So was this over January, or January and February?  
16 A. Yes, January, February, into March.  
17  
18 Q. And were you also in contact with your insurer?  
19 A. Yes.  
20  
21 Q. And can I have the 13th exhibit brought up, please,  
22 which is RES.0010.0001.0013. Do you recognise this email?  
23 A. Yes.  
24  
25 Q. So it's from you to Kendrick Koa at CHU?  
26 A. Yes.  
27  
28 Q. Who is Mr Koa?  
29 A. He is the loss adjuster that was working on our case.  
30  
31 Q. Yes. And in the body of this email there's text in a  
32 numbered list, and then there's text in bold after that?  
33 A. Yes.  
34  
35 Q. Where is the bold text from, as best you can recall?  
36 A. That's from the shire.  
37  
38 Q. Yes. Can you remember how the shire communicated  
39 those responses to you?  
40 A. It would have been on an email.  
41  
42 Q. Yes. So you're providing your insurer with a series  
43 of questions that were asked of the shire and the shire's  
44 responses?  
45 A. That's correct.  
46  
47 Q. And you can see at B, the second paragraph from the

1 bottom there, that one of the questions asked was, "Is the  
2 plan timeframe still realistic as we're already 3 weeks  
3 behind schedule?" And the bolded response is, "At this  
4 stage timeframes are unknown and we'll have more  
5 information once the peer review is complete. I estimate  
6 the peer review will be completed early February."

7 A. That's right.  
8

9 Q. And the peer review being referred to there is the  
10 review of the geotechnical reports that had been provided  
11 in December?

12 A. That's correct.  
13

14 Q. And at C it says, "At what stage in the plan timeline  
15 can the two families return to their homes?" And the bold  
16 in response in part, "The residents could return to their  
17 homes once the risk of any remaining loose material has  
18 been eliminated."

19 A. That's right.  
20

21 Q. Did that give you any comfort; once the risk of any  
22 remaining loose material would be eliminated that you would  
23 be able to return to your home?

24 A. Yes, it did.  
25

26 Q. And why is that?

27 A. Well, we wanted very much to go home, but we wanted to  
28 make sure that we go home to a safe environment.  
29

30 Q. Yes. And, after this, you made further contact with  
31 the council which I think is worthwhile bringing to the  
32 chair's attention because you mentioned a wet area  
33 underneath the platform at the top of the slope?

34 A. Yes.  
35

36 Q. Do you recall that?

37 A. Yes, I do.  
38

39 Q. If I can have the 14th exhibit brought up which is  
40 RES.0010.0001.0014. It's an email from you to Mr Flores?

41 A. Yes.  
42

43 Q. And you can see the third last paragraph states, "We  
44 understand the shire inspects the site on a regular basis.  
45 The attached photo shows a significant wet area around and  
46 underneath the platform at the top of the slope. It's been  
47 there for a while now."

1 A. Yes, I remember that; yes.

2

3 Q. And, the photos, if we can scroll to the next page,  
4 these are the attached photos. Did you take these photos?

5 A. No, one of our neighbours did.

6

7 Q. Okay. Were you present at the time these photos were  
8 taken?

9 A. Yes, I was.

10

11 Q. And can you recall what did you understand looking at  
12 the slope, the dark area, the dark patch there to be?

13 A. Well, I understood that the general area was beginning  
14 to dry out, but we had this very dark area, clearly a wet  
15 area, and it concerned me.

16

17 Q. Yes.

18 A. So really all we were doing was pointing that  
19 information out to the shire, "We think it's probably  
20 worthwhile you have a look at this."

21

22 Q. Yes. And, this patch of the dry dirt area to the  
23 right of that, as best you can recall was that visible  
24 previously as dirt or was that a vegetated area?

25 A. That was a vegetated area.

26

27 Q. Yes. So is it your understanding that this is the  
28 location that slipped down the slope?

29 A. Correct.

30

31 Q. Thank you. Can I have the next exhibit brought up,  
32 which is RES.0010.0001.0015. Mr Flores replied to your  
33 email? 17, sorry.

34 A. Yes, I remember that.

35

36 Q. And you can see there the last paragraph - sorry,  
37 I withdraw that. The first paragraph says, "I confirm that  
38 peer review has been completed and the proposed methodology  
39 and two- to three-staged approach has been considered  
40 acceptable."

41 A. Yes.

42

43 Q. Did that give you some comfort, that that was being  
44 stated to be acceptable by the council?

45 A. Yes, it did.

46

47 Q. And what did you expect would occur then as a result

1 of that?  
2 A. Well, we expected that the process would begin.  
3  
4 Q. Yes. But of course it didn't begin?  
5 A. No, it didn't.  
6  
7 Q. And in respect of the wet area part of your email at  
8 the bottom you can see in bold Mr Flores says, "I'll make  
9 enquiries and have this area inspected."  
10 A. That's right.  
11  
12 Q. And you continued to have correspondence with  
13 Mr Flores and the council after this in respect of  
14 the water?  
15 A. I did, yes.  
16  
17 Q. And did the water remain an issue of concern for you?  
18 A. It did.  
19  
20 Q. And are you aware of whether there were complaints  
21 lodged by other residents about the water that was visible  
22 draining through the escarpment?  
23 A. Yes, I had discussions with Mr Wells, Ben Wells, and  
24 he told me that he was so concerned about it that he had  
25 lodged a ticket, if you like, with the shire to have it  
26 looked at.  
27  
28 Q. Yes. Can I please look at - have brought up, sorry,  
29 RES.0010.0001.0018. And you can see here, Mr Willigenburg,  
30 this is an email forwarded to you from Mr Wells?  
31 A. Yes.  
32  
33 Q. And the email that he's forwarding is one that he sent  
34 on 17 February to Mr Essing and Mr Flores about drainage  
35 problems, View Point Road and Penny Lane?  
36 A. That's correct.  
37  
38 Q. And he states that he and his wife are still concerned  
39 about considerable water running off the hill?  
40 A. Yes.  
41  
42 Q. And in the last paragraph on the next page, the second  
43 last paragraph, states that - asks whether it would be  
44 possible for the shire to review the drainage system and  
45 make necessary improvements?  
46 A. Yes.  
47

1 Q. Did you share similar concerns to those in this email?  
2 A. Yes, I did.  
3  
4 Q. And are you aware when those - when or whether the  
5 council began performing update to the drainage on View  
6 Point Road?  
7 A. From my recollection, I think it was May of that year.  
8  
9 Q. Yes.  
10 A. May or June.  
11  
12 Q. Can I have RES.0010.0001.0024 brought up, please. You  
13 were also in correspondence with the council about delays?  
14 A. Yes.  
15  
16 Q. And you were still - I assume still quite concerned  
17 about the lack of progress on the three-stage --  
18 A. Yes, we were getting more and more concerned.  
19  
20 Q. Yes. And at this point can you remind the chair you  
21 were living at 607?  
22 A. That's right. We were.  
23  
24 Q. And your rent, who was paying for your rent?  
25 A. CHU.  
26  
27 Q. Yes. And had you been able to remove your possessions  
28 from your home at 613?  
29 A. Yes, we had been.  
30  
31 Q. Yes. Had you had much correspondence with CHU up  
32 until this point?  
33 A. Other than the process we had for payment of the rent,  
34 although occasionally what I would do for Kendrick was to  
35 provide him an update every now and again. I'd give him an  
36 update of what was happening, where we were and what we  
37 were doing. They were paying the rent. So I thought that  
38 would be a good thing to do, keep them in the loop.  
39  
40 Q. Yes. And, this email that's on screen, do you recall  
41 ever having received a response to it?  
42 A. No.  
43  
44 Q. So you never got an update in response to this email  
45 on 1 March?  
46 A. No, I didn't.  
47

1 Q. And did you keep trying to get information out of  
2 the council after March 2023?  
3 A. No.  
4  
5 Q. Why is that?  
6 A. We just considered it to be a waste of time.  
7  
8 Q. And why did you consider it to be a waste of time?  
9 A. Well, we were sending emails and getting no responses.  
10 So we just weren't getting anywhere.  
11  
12 Q. Were you attempting to contact them by phone?  
13 A. I did try that, and nobody ever rang me back.  
14  
15 Q. So you couldn't get through to anyone?  
16 A. No.  
17  
18 Q. Do you recall in May receiving correspondence from CHU  
19 about the insurance for the landslide?  
20 A. Yes.  
21  
22 Q. This is May 2023?  
23 A. Yes, I do.  
24  
25 Q. Can I have RES.0010.0001.0027 brought up, please. Do  
26 you recognise this email?  
27 A. Yes, I do.  
28  
29 Q. This is an email from Mr Koa to you where he refers to  
30 CHU's appointed engineer, Logocon, having reviewed the  
31 geotechnical report.  
32 A. Yes.  
33  
34 Q. And if you read the last paragraph it states,  
35 "Logocon's report states that the preliminary slope  
36 stability analysis indicates the approximate cause of the  
37 slope's failure on the neighbourhood site is inadequate  
38 construction of the slope at an excessively steep angle  
39 beyond the safe slope angle, making the slope unstable and  
40 susceptible to failure."  
41  
42 If we can scroll down Mr Koa lists the exclusions. It  
43 says, "We will not pay damage caused by or arising directly  
44 or indirectly from" - and if you can go to the next page,  
45 please, and zoom in on that. Thank you. The embolded  
46 section of the clause, "The removal or weakening of or  
47 interference with the supportive land or ... erosion or

1 earth movement", and he says in the second last paragraph,  
2 "As such, I regret to advise you that we are unable to pay  
3 the claim as the damage is caused by factors outside the  
4 policy terms."

5 A. Yes, I remember that --

6

7 Q. I'm sure you do.

8 A. -- very, very well.

9

10 Q. How did you feel when you received this email from  
11 Mr Koa?

12 A. Sick, to be honest. I mean, what that was basically  
13 telling me was that we weren't in our house, we were in a  
14 rented property that we were now going to have to pay over  
15 \$3,600 a month for, with no apparent sign of being able to  
16 return to our actual home. So, yes, probably about as lost  
17 as we had been. My wife didn't react to the letter very  
18 well at all. Yes, so it wasn't a good day.

19

20 Q. Yes, I can imagine. And around that time you decided  
21 to engage McGuinness Legal?

22 A. Yes, we did.

23

24 Q. And you engaged them, I assume, because you felt as  
25 though it was starting to get a bit above your head and  
26 that you needed some professional help with dealing with  
27 the council and with the insurer?

28 A. Yes. Our sons spoke to us both and basically said,  
29 "Look, you're going to need professional help here. Your  
30 insurer's abandoned you. You can't seem to get any  
31 traction from the shire. You're going to need legal  
32 assistance." So, yes, we went to McGuinness Legal.

33

34 Q. Yes. And you engaged them in May 2023?

35 A. That's right.

36

37 Q. And within about a month or so they had sent a series  
38 of letters out to the owners of 10-12 View Point Road but  
39 also to the shire requesting documents?

40 A. Yes, they did.

41

42 Q. And do you recall whether you received documents in  
43 response to those letters?

44 A. No.

45

46 Q. And did they also engage geotech for you themselves?

47 A. Yes, they did.



1  
2 Q. Can you recall who that was?  
3 A. That was - just off the top of my head, I can't  
4 recall.  
5  
6 Q. No, that's okay. It's not a memory test really.  
7 AS James was the --  
8 A. That's right. Correct. That's right.  
9  
10 Q. And what were AS James engaged to do?  
11 A. To review the other technical reports that had been  
12 issued and perhaps offer some sort of alternative for us.  
13  
14 Q. Yes. Can I have exhibit 22 brought up, which is  
15 RES.0010.0001.0029. This is a letter that was sent by  
16 McGuinness Legal to RACV Home Claims on 25 July.  
17 A. Yes.  
18  
19 Q. How were RACV Home Claims relevant?  
20 A. It was our understanding that RACV were the insurer  
21 for the Borghesi family.  
22  
23 Q. Yes, at 10-12 View Point Road.  
24 A. Correct.  
25  
26 Q. And you can see there that McGuinness Legal have asked  
27 them to provide copies of documents, and in the second last  
28 paragraph they state, "If you do not agree to so disclose,  
29 we will select our options of forum and application in VCAT  
30 or in the Supreme Court. We emphasise we prefer not to  
31 litigate."  
32 A. That's correct.  
33  
34 Q. So I assume that you'd just - at that point you felt  
35 that you had no other option to get movement?  
36 A. That's right.  
37  
38 Q. And this is in July, late July, of 2023?  
39 A. Yes.  
40  
41 Q. So at that point had you been provided any expert  
42 analysis or expert report by either the council or any  
43 other party?  
44 A. No.  
45  
46 Q. And I assume you were quite fed up with the state of  
47 affairs?

1 A. Yes. Yes, you could say that.  
2  
3 Q. So what is it that you decided to do?  
4 A. Through McGuinness Legal they had a view that what we  
5 probably should do was to challenge the validity of  
6 the emergency order that had been raised in November and to  
7 seek the services of a lawyer who would specialise in the  
8 Building Act, and that's basically what we decided to do.  
9  
10 Q. Yes. And you ultimately sent a letter to the council,  
11 and I can bring this up. It's RES.0010.0001.0038, which is  
12 a letter from McGuinness Legal to the council on 7 December  
13 2023 which very succinctly states that you had taken advice  
14 that the emergency order is invalid, and that you had an  
15 initial engineering assessment confirming that preliminary  
16 works could go ahead, and paragraph 3, "Our client  
17 instructs they are going to move back into their house"?  
18 A. That's right.  
19  
20 Q. And is that what you did?  
21 A. That's exactly what we did.  
22  
23 Q. So you moved back into your home approximately when?  
24 A. October that year.  
25  
26 Q. And did you receive a response from the council to  
27 this letter, as best you can recall?  
28 A. Yes, we did. Yes.  
29  
30 Q. And what did they say?  
31 A. We finally got some traction, and arrangements were  
32 begun to be made to have a meeting with the council.  
33  
34 Q. Yes.  
35 A. At McGuinness Legal's offices in Rosebud.  
36  
37 Q. Yes. And that meeting occurred in November 2023?  
38 A. That's correct.  
39  
40 Q. So about a year after, a bit under a year after the  
41 landslide you had your first face-to-face meeting with  
42 the council; is that right?  
43 A. That's right.  
44  
45 Q. And can you recall who was there at this meeting?  
46 A. Yes. There was Paul McGuinness, Jay Fergus of  
47 McGuinness Legal, myself, Matt Glover from the council,

1 Claudio Flores from the council, and then an array of legal  
2 people.

3

4 Q. Yes, like in the courtroom right now?

5 A. Quite a lot of them.

6

7 Q. And can you recall what the resolution of this meeting  
8 was?

9 A. Well, the council made it very, very clear at the  
10 outset that they weren't happy that we had gone home, on  
11 the basis of risk to life. So I gave them an explanation  
12 as to why we had gone home. And the logic that we used was  
13 that the general area behind the house had dried out, the  
14 drainage issue that had been a problem at the top of the  
15 slope had been rectified by the council. The individual  
16 who was attending the site on a daily basis for some months  
17 - this person used to turn up sometimes in the morning,  
18 sometimes in the evening, would review the area on four,  
19 five times a week, take photographs or go through the  
20 safety fencing and have a look. They stopped coming. So  
21 it had been some weeks before - since anybody from the  
22 shire had been attending the site. So it just seemed to us  
23 that - and we were in summer. So it just seemed to us  
24 that, you know, it seemed a logical step to go home.

25

26 Q. Yes. And around that time you also had some good news  
27 at the body corporate meeting?

28 A. Yes. Yes, we went to our annual body corporate  
29 meeting, and what I hadn't known at the time was that the  
30 other resident, Mr McLean, who had been removed from their  
31 property at 2 Penny Lane, they had been going through a  
32 separate process unbeknown to us and they had been able to  
33 secure with the insurer for the claim to be reinstated  
34 again. He told us about that at the body corporate  
35 meeting.

36

37 Q. Yes. So CHU had reversed their decision in effect and  
38 determined to actually accept your claim?

39 A. Yes.

40

41 Q. Or the body corporate's claim on your behalf?

42 A. That's right. They did. And they refunded all our  
43 rental payments.

44

45 Q. That must have been a big relief?

46 A. It was. Coming up to Christmas, it was good. At  
47 least we had some sort of victory. So that was good.

1  
2 Q. And so how long did you end up being able to stay in  
3 your property?  
4 A. I think it was October 23 until February, I think  
5 February 24.  
6  
7 Q. Yes. And what happened in February 24?  
8 A. We received communication from the Mornington  
9 Peninsula Shire that they wanted to do a site inspection at  
10 our property and would I approve that process, which I did.  
11  
12 Q. Did you know what it was for?  
13 A. Yes, I did.  
14  
15 Q. And what did you think it was for?  
16 A. I thought it was to determine whether or not we should  
17 be in the house.  
18  
19 Q. Yes.  
20 A. And I fully expected at that stage that an additional  
21 emergency order would be issued, and it was.  
22  
23 Q. Yes. So on 5 February you were issued an emergency  
24 order by Mr Flores?  
25 A. Yes.  
26  
27 Q. And there was a series of emergency orders issued to  
28 you following that; is that correct?  
29 A. Yes.  
30  
31 Q. So you had to move out of your home again?  
32 A. We did.  
33  
34 Q. And where did you go to this time?  
35 A. Well, before I started the process of ringing real  
36 estate agents again, my wife had noticed that at  
37 607 Point Nepean Road there was a for lease notice gone up.  
38 Mr Wells had left 3 Penny Lane at this stage.  
39  
40 Q. Yes.  
41 A. So he was no longer the property manager. So it was  
42 with Belle Property Group. So I rang them and, yes,  
43 luckily it was available and in we went again.  
44  
45 Q. It would have felt familiar to you at that point?  
46 A. It did. It did.  
47

1 Q. And did you understand the emergency orders that you  
2 had been issued in that period, in February, to require you  
3 to do anything?

4 A. Well, I mean, those orders give you an indication that  
5 you're supposed to do something, and again I queried that  
6 and, no, we weren't expected to do anything; just vacate  
7 the property.  
8

9 Q. Yes.

10 A. Be out of it.  
11

12 Q. So in April 2024 you began a proceeding in the  
13 Building Appeals Board?

14 A. That's correct.  
15

16 Q. And that proceeding is still ongoing?

17 A. It is.  
18

19 Q. And can you explain in a summary way for the chair  
20 what that application concerns?

21 A. Yes. Through AS James, our geotech specialist, it was  
22 suggested that the construction of a debris wall at the  
23 foot of the slope in between the Borghesi property and our  
24 property would be a barrier for any potential future  
25 landslide and that would enable us to go back to the  
26 property. So that was the basis of our claim.  
27

28 Q. Yes. And do you know what the status is of that  
29 proceeding currently?

30 A. It's pending.  
31

32 Q. And to bring you forward then to 2025 - or, sorry, to  
33 late 2024, in December you started to notice that the spoon  
34 drains on Penny Lane were full; is that right?

35 A. Yes.  
36

37 Q. And had it been raining that could explain the --

38 A. No, no rain.  
39

40 Q. And was there other moisture around that you noticed?

41 A. No.  
42

43 Q. What about in the ground? Did the ground seem spongy  
44 and --

45 A. Either side of the spoon drain it was a bit - yes, so  
46 the water was overflowing from those drains.  
47

1 Q. Yes. And those are the drains, are they, at the entry  
2 to Penny Lane off the Point Nepean Highway?  
3 A. Yes, they are.  
4  
5 Q. And they're surrounded by grassed areas?  
6 A. Yes.  
7  
8 Q. Can I have exhibit 30 brought up, please, which is  
9 RES.0010.0001.0045. You provided a notification to the  
10 council of the unexplained moisture in the drains?  
11 A. Yes.  
12  
13 Q. And if we can go to the next page, please. That's a  
14 photograph you took of the spoon drain you're referring to?  
15 A. Yes.  
16  
17 Q. And could you see water in those drains when you  
18 looked?  
19 A. Yes.  
20  
21 Q. Could you hear water in them?  
22 A. Yes.  
23  
24 Q. How did it sound?  
25 A. Just like - on one occasion I went and had a look it  
26 was - there was clearly a whooshing sound. And another  
27 time I went and had a look at it, because it was like this  
28 for quite a number of weeks, it was just a low trickling  
29 sound of water.  
30  
31 Q. Yes. So do you have any memory of whether the rate of  
32 water flow based on the sound increased or decreased or  
33 stayed the same or you can't say?  
34 A. I would say increased.  
35  
36 Q. Increased over time?  
37 A. Yes.  
38  
39 Q. And then on the morning of the landslide, on 6 January  
40 2025, the first one that year, you spent some time talking  
41 with the Morans?  
42 A. Yes, we did. Yes.  
43  
44 Q. And can you recall what you discussed with them?  
45 A. My wife and I had been for a walk. As we walked back  
46 along Point Nepean Road towards 607 Point Nepean Road we  
47 noted there were a lot of people on Penny Lane, a number of

1 SES workers.

2  
3 Q. Yes.

4 A. And, from memory, I think Matt from the shire was  
5 there as well. We didn't know Nick and Kellie at that  
6 stage, but we knew who they were. So we basically  
7 approached them and asked them, you know, "Can we help?  
8 Can we help you with anything? What's going on? What's  
9 happened?" And then they told us that there had been a  
10 landslip on the Sunday and their daughter had almost been  
11 injured by it. And they showed me a photograph of the back  
12 of the house.

13  
14 So we were very shocked, mainly because we hadn't  
15 heard anything. So this has happened the night before.  
16 I couldn't understand why something of that magnitude we  
17 hadn't heard. So the damage was quite extensive. I can't  
18 remember if it was that day or another day, but we went  
19 into the house with them. It might have been that day  
20 while all the other people were there just to have a look.  
21 And then I explained to them on that day, you know, who we  
22 were and what our history had been in relation to the first  
23 landslide, and I just said, "Look, if you need a hand with  
24 anything, some advice on anything, we've been there and  
25 done that in a way, happy to help if we can."

26  
27 Q. And do you recall whether you discussed the drains  
28 with them?

29 A. I don't recall, to be honest.

30  
31 Q. And do you recall when you went into the house did you  
32 notice any water?

33 A. Yes, there was water. Yes.

34  
35 Q. And --

36 A. A lot of water inside the property in the front room.  
37 A lot of mud.

38  
39 Q. And over the following few days did you notice water  
40 coming down Penny Lane?

41 A. Yes, a lot of water.

42  
43 Q. And can I take you then to 14 January, which is the  
44 morning of the major landslide. Where were you that day?

45 A. I was in the front room of 607 Point Nepean Road.

46  
47 Q. Yes, in the morning?

1 A. In the morning, yes.  
2  
3 Q. And where was Denise?  
4 A. She was in the laundry at the back of the house.  
5  
6 Q. So the room nearest to the boundary with 3 Penny Lane?  
7 A. Yes.  
8  
9 Q. And can you recall when the landslide occurred what  
10 did you - did you hear it first or did you see it?  
11 A. We heard it. It was a really, really loud rumbling  
12 noise, and then a massive crash. I've got no idea what was  
13 going on, but my wife - I heard my wife scream out that the  
14 house has come down, and we just ran.  
15  
16 Q. You ran out of the house?  
17 A. Absolutely ran out of the house. There's a front  
18 gate. So we opened the front door, ran out the front - of  
19 the front through the gate. We ran out to the front of the  
20 property onto the sort of - Point Nepean Road. And I can't  
21 really recall why I did but I turned left and ran along the  
22 front fence line into Penny Lane.  
23  
24 Q. Yes.  
25 A. And it was at that point I noticed somebody lying at  
26 the top of Penny Lane.  
27  
28 Q. Yes.  
29 A. Near the gate to the Morans' property.  
30  
31 Q. And how did the - could you see the house at  
32 3 Penny Lane?  
33 A. Yes. It was basically hanging over the back of the  
34 garage to 607 and the back of the house. It looked as if  
35 it had split in two parts, and it was just resting on the  
36 back of the house.  
37  
38 Q. Yes. And the person who you noticed, did you go up to  
39 him or her?  
40 A. Yes, I did.  
41  
42 Q. And who was that?  
43 A. That was Matt Glover from the shire.  
44  
45 Q. And what condition was Mr Glover in?  
46 A. He was in a terrible state. He was screaming and he  
47 had blood on his head. He had shards of glass sticking in



1 his head. He was lying on his side. He was conscious,  
2 though. I can't remember what I said to him at the time,  
3 but he was conscious. And what I understood from him - it  
4 was difficult to totally understand, but because I knew he  
5 had been visiting the property on a daily basis generally  
6 in the morning and he must have - he must have heard the  
7 rumble, and I knew he was on the front deck of the  
8 property, and he jumped, and that would have caused the  
9 injuries that he ended up sustaining.

10  
11 Q. Yes. By that point there are a few other people  
12 around?

13 A. Yes. So within a minute one of the other local  
14 residents, Mike O'Neill, he came up the driveway of  
15 Penny Lane. I think John D'Helin, another resident. There  
16 was another individual. I don't know who that was, but  
17 that individual had a mobile phone. And so we asked that  
18 person to ring for an ambulance and contact the emergency  
19 services. The person rang for an ambulance. Then they  
20 handed the phone to me as the despatch operator came on, on  
21 the phone. We explained what had happened, and they  
22 started asking me about Matt, you know, "Is he conscious?  
23 Can you speak? Can you speak to him," all those sorts of  
24 things. And --

25  
26 Q. If you want to take a moment, pour yourself a glass of  
27 water.

28  
29 CHAIRPERSON: We can always have an early lunch break.

30 A. It's okay. Yes, so the despatcher - I was on the  
31 phone with the despatcher. And Mike O'Neill said to me at  
32 that point, "Paul, you need to tell the despatcher the  
33 house is moving. We've got to get Matt away from here."  
34 So I told the despatcher that and they said, "Okay, as best  
35 you can, because he's obviously seriously injured, drag him  
36 as far away as you can." And so we probably dragged him  
37 about four or five metres towards the front of Jon McLean's  
38 property at 2 Penny Lane.

39  
40 MR DI STEFANO: Yes. And after that the SES arrived and  
41 an ambulance arrived?

42 A. Yes, the police, the SES. Yes, very quickly.

43  
44 Q. And were you subsequently served with an evacuation  
45 notice on the rental property that you were staying in at  
46 607?

47 A. I don't recall it being issued at that very moment,

1 but my wife told me that she had been spoken to by an SES  
2 person who said - he was asking who lived at 607, who was -  
3 so my wife identified herself. He said, "You need to get  
4 into the house, grab whatever medication, anything that you  
5 can grab, but you're only going to get one minute to do  
6 it." So she went in and grabbed some medication that  
7 I have, and then she had to leave the house. That was it.  
8 And pretty much everybody was moved. Once Matt had been  
9 loaded into the ambulance, the SES and the police moved  
10 everybody down to the bottom of Penny Lane. And then  
11 progressively over the next hour everybody was moved  
12 further and further away from the site and the road was  
13 beginning to be secured and closed off to traffic. That  
14 all happened I think within 30-odd minutes.

15  
16 Q. And that minute you had in the home or Denise had in  
17 the home, that was the last minute you had in the home  
18 until mid-April 2025; is that correct?

19 A. That's right.

20  
21 Q. And why is it that you were allowed back into the home  
22 in mid-April 2025?

23 A. We had been consistently asking the MBS at the time --

24  
25 Q. The municipal building surveyor?

26 A. Yes, to get access to the property because all our  
27 possessions were in that property. So we had nothing,  
28 basically.

29  
30 Q. Yes.

31 A. So the shire had provided us with some funds to buy  
32 some clothes and some medication and a few bits and pieces,  
33 which was good. But we needed a lot more than that. So,  
34 to be honest, you know, we spent a bit of our own money to  
35 start buying a few more things again and visited a few  
36 opportunity shops here and there to get a bit more.

37  
38 But, at the end, I asked the MBS a very simple  
39 question at a MERG meeting of the local residents in  
40 McCrae, and the question I asked him in April was, "Can you  
41 tell the audience here how many of the affected residents -  
42 how many of the affected residents, how many of those  
43 affected residents have not had access to their property to  
44 get their possessions? How many?" And he basically told  
45 the audience that there were only one. And I said, "Can  
46 you tell the audience who - what property that is?" And he  
47 said it was 607 Point Nepean Road. I said, "Well, you

1 know, we're the last one. We've been evacuated from two  
2 properties. We need to get into the property."

3  
4 And basically he agreed to let us back into the  
5 property on I think the following Thursday. He reneged on  
6 that promise; rang me and said, "We can't. There's water  
7 running through 607. You can't have access. We're going  
8 to have to rearrange the date." That annoyed the hell out  
9 of me because we had a friend over from the UK then and,  
10 whilst we were taking that person to the Queenscliff ferry  
11 that day, we drove past 607. At the property next door,  
12 John Bolch's property, the MBS was in that property and  
13 they were removing John's possessions on that day, the day  
14 that we were supposed to be removing the possessions from  
15 607. So you just started to get a bit of a feeling at this  
16 time that somebody didn't like us. I don't know what it  
17 was, but we didn't seem to be able to get a break for  
18 anything, to be honest. But, in the end, we finally did  
19 get in.  
20

21 Q. And what did you find when you went into your  
22 property?

23 A. It had been ransacked, as had our actual property. So  
24 unit 3/613 had been burglarised as well. So both  
25 properties had been ransacked. Very selective in what they  
26 took. So basically was a lot of jewellery, watches,  
27 laptop. Yes. And the story was the same in both  
28 properties. So that's basically what they took.  
29

30 Q. That's the end of the questions I wanted to ask you.  
31 Is there anything you would like to take the opportunity to  
32 say to the chair and the inquiry?

33 A. Yes. I would like to thank the chair and the board  
34 for giving us this fantastic opportunity to have our day in  
35 court. We see this as a real opportunity to try and get  
36 some traction in our situation, not only for Denise and  
37 I but for everyone, everyone involved, all the affected  
38 residents. We just hope that they get a good, positive  
39 outcome. I'd like to thank Zoe and Samantha for all their  
40 help with me over the last couple of weeks. And, to my  
41 family and friends, I just want to thank them for all their  
42 support as well. Yes. So thank you very much. Thank you.  
43

44 MR DI STEFANO: No further questions.

45  
46 CHAIRPERSON: Thanks, Mr Di Stefano. Are there any  
47 questions? No. Mr Willigenburg, thank you very much for

1 coming along. Thank you for giving evidence today to  
2 assist the inquiry. We're very grateful for your time.  
3 A. Thank you.  
4

5 CHAIRPERSON: And there are no other questions, so that  
6 completes your evidence and you're excused.  
7 A. Thank you.  
8

9 **<THE WITNESS WITHDREW**

10  
11 MR DI STEFANO: Madam Chair, that's the completion of the  
12 witnesses for the morning.  
13

14 CHAIRPERSON: We will adjourn until 2.15.  
15

16 **LUNCHEON ADJOURNMENT**

17  
18 **UPON RESUMING AT 2.15 PM:**  
19

20 CHAIRPERSON: Mr Costello.  
21

22 MR COSTELLO: Thank you, Madam Chair, the next witness is  
23 Gerrard Raymond Borghesi, who I call.  
24

25 **<GERRARD RAYMOND BORGHESI, sworn:**

26  
27 **<EXAMINED BY MR COSTELLO:**  
28

29 CHAIRPERSON: Mr Costello is one of the counsel assisting  
30 the inquiry, and he's going to ask you some questions.  
31

32 MR COSTELLO: Your full name is Gerrard Raymond Borghesi?  
33 A. Correct.  
34

35 Q. And your address is 10-12 View Point Road in McCrae?  
36 A. Correct.  
37

38 Q. You're a civil engineer by training?  
39 A. Civil structural engineer by training.  
40

41 Q. And now retired?  
42 A. Correct.  
43

44 Q. And you've been served with a notice to attend and  
45 give evidence?  
46 A. I have.  
47

1 Q. And you're attending here today in answer to that  
2 notice?

3 A. I am.  
4

5 Q. Thank you, Mr Borghesi. Now, Mr Borghesi, you've  
6 given a witness statement to the board of inquiry. Can  
7 I have a copy handed to you, please. Could I ask you to  
8 check that that is in fact the witness statement that you  
9 have made?

10 A. It is.  
11

12 Q. Are the contents of that statement true and correct?

13 A. They are.  
14

15 Q. Could I ask you to sign that statement on the final  
16 page, please?

17 A. I will.  
18

19 Q. Madam Chair, I tender that witness statement and the  
20 exhibits referred to therein.

21  
22 CHAIRPERSON: Thank you. That document will be exhibit  
23 CA22.  
24

25 **EXHIBIT #CA22 STATEMENT OF GERRARD RAYMOND BORGHESI AND**  
26 **EXHIBITS REFERRED TO THEREIN.**  
27

28 MR COSTELLO: Mr Borghesi, am I right to assume that  
29 you've been following the proceedings to date?

30 A. I have been.  
31

32 Q. Not just today?

33 A. Not just today.  
34

35 Q. Did you catch some of my opening statement?

36 A. I did.  
37

38 Q. And you've heard at least some of the evidence of  
39 other witnesses?

40 A. Correct.  
41

42 Q. All right. Thank you. From time to time in the  
43 course of the examination I might refer to evidence others  
44 have given. If it happens that you're not aware of that  
45 particular evidence or you don't have a recollection of it,  
46 you need only say so?

47 A. Okay.

1  
2 Q. Now, could I have on the screen, please,  
3 MSC.5000.0001.0639. Could I have it at page .0693. Sorry,  
4 thanks, if you could go across one page. Thank you.  
5 Perfect. Now, Mr Borghesi, just to orientate ourselves  
6 here, this is a map that at the bottom right-hand side is  
7 View Point Road; is that correct?  
8 A. That is correct.  
9  
10 Q. And the first property on the right-hand side of  
11 the map, that's number 6 View Point Road?  
12 A. It is.  
13  
14 Q. And then the property immediately next to that on the  
15 left is 10-12 View Point Road, which is your property?  
16 A. Correct.  
17  
18 Q. All right. And then - I'm sure we're all familiar  
19 with it by now, but just to be precise about it - if one  
20 travels from your property down towards what is  
21 Point Nepean Road, on the left-hand side there sort of  
22 where the cursor is, where the yellow part is marked,  
23 that's the site of the 2022 landslide?  
24 A. Put the cursor back, if you may, just so I can see.  
25 Yes, that is the site of the 22 landslide.  
26  
27 Q. Thank you. And to the immediate right of that is the  
28 Penny Lane property that was destroyed in the 2025  
29 landslide?  
30 A. Correct.  
31  
32 Q. I see. Thank you. And are you aware of the  
33 circumstances in which this particular photograph was made?  
34 A. No, I'm not.  
35  
36 Q. All right. This comes from Mr Pope's report, and  
37 I think it was taken with the assistance of a drone. Now,  
38 when did you buy the property at 10-12 View Point Road?  
39 A. In May 2014.  
40  
41 Q. And where were you living at that point in time?  
42 A. Dallas, Texas, United States.  
43  
44 Q. How long were you in - well, don't worry about where.  
45 How long were you overseas as a permanent resident?  
46 A. Approximately 20 years prior to that date.  
47

1 Q. I see. And when you acquired the property in May 2014  
2 how soon after the acquisition did you use the property?  
3 A. Frequently thereafter in visits or trips back to  
4 Australia. So I couldn't tell you precisely when the first  
5 visit was post purchase, but typically two to four times a  
6 year until I retired.  
7  
8 Q. And did you do any works to the property after you  
9 acquired it before it became your permanent residence?  
10 A. We did.  
11  
12 Q. All right. We might come back to those works soon.  
13 But, to keep the chronology for now, it was in 2020 that  
14 you returned to Australia on a full-time basis; is that  
15 right?  
16 A. Correct.  
17  
18 Q. All right. And was that in May?  
19 A. No, December 2020.  
20  
21 Q. In December. And how soon after your return to  
22 Australia did the property at McCrae become your permanent  
23 residence?  
24 A. Immediately.  
25  
26 Q. All right. Now, you mentioned that you had done some  
27 works to the property before it became your permanent  
28 residence in 2020. Could you just outline what those works  
29 were?  
30 A. We commissioned an architect and a builder to  
31 essentially renovate the property because we viewed it as  
32 being a retirement place for us. So the entire interior of  
33 the house was effectively remodelled, modernised, and the  
34 western edge of the property, which is to the left of  
35 the plan as we're looking at it, there was a deck put out  
36 there, which you can just see under a tree, and on the  
37 eastern end of the property there was a fairly extensive  
38 deck put out, which is - the best way to describe it is  
39 directly to the south, which is to the bottom of the page,  
40 of that sloping stone wall that you can see on the  
41 north-eastern boundary of the property.  
42  
43 Q. That's towards your neighbours at 6 View Point Road?  
44 A. Correct. And the addition of a garage, which you can  
45 see on the boundary of 6 View Point Road.  
46  
47 Q. So when were - were those works done progressively or

1 was it all done at the same time?  
2 A. Progressively, two stages, between approximately 2015  
3 and probably early 2018.  
4  
5 Q. Thank you. Did you do any landscaping works other  
6 than the building of the decks?  
7 A. Yes.  
8  
9 Q. What did you do?  
10 A. Generally it was a replanting of that garden area to  
11 the north of the property where there's a lawn that was  
12 replanted. The grass area was resown. The western area  
13 where that tree is over that deck, garden beds were  
14 installed there. And on the southern side of the property,  
15 so adjacent View Point Road, that entire area was  
16 landscaped. It was essentially, you know, left in ruin  
17 because it hadn't been - the house hadn't been occupied for  
18 many years. And on the south-eastern edge of the property  
19 where you can see the car, that triangle there, we planted  
20 trees. And of course in the process of construction there  
21 was replanting of trees on that - where the kink in the  
22 eastern boundary is adjacent 6 View Point Road.  
23  
24 Q. Right. And in the period between May 2014 and  
25 December 2020 while you were living overseas did anybody  
26 occupy this home on a permanent basis?  
27 A. Not on a permanent basis.  
28  
29 Q. Okay. But it was used on occasion by others?  
30 A. Correct.  
31  
32 Q. Thank you. While we have the picture on the screen  
33 can I just get an impression from you as the property owner  
34 of the nature of the slope that runs down from your  
35 property towards Penny Lane on either side. There's the  
36 area in yellow there that we pointed to before, which is  
37 the area of the 2022 landslide. Of course the area of  
38 the 2025 landslides is on the other side of the property  
39 directly in line with what was the Morans' house. Is it  
40 right that those two areas are separated in some sense by a  
41 ridge that's close to the middle of your property?  
42 A. I would say that's a fair assessment.  
43  
44 Q. So that the two areas where the landslides occurred  
45 are slightly lower lying than that green strip in the  
46 middle; is that right?  
47 A. Perhaps you could clarify that question for me.



1  
2 Q. Yes, of course. If you see the area of the 2022  
3 landslide on the left?  
4 A. Yes.  
5  
6 Q. If one then moves to the right of there, there looks  
7 like, in this shot at least, quite a bit of vegetation  
8 around there, which looks to be roughly the middle of the  
9 block?  
10 A. Correct.  
11  
12 Q. Is that area where the vegetation is, is that slightly  
13 higher than the area where the 2022 landslide was?  
14 A. I wouldn't describe it that way.  
15  
16 Q. All right.  
17 A. I would say that area where that heavy vegetation is,  
18 which is directly uphill of number 2 Penny Lane, is of a  
19 very similar slope and composition to the slope where the  
20 2022 landslide occurred.  
21  
22 Q. Thank you. Is it also similar to the composition of  
23 the slope where the 2025 landslide occurred?  
24 A. No, it is not.  
25  
26 Q. All right. How would you distinguish the 2025  
27 landslide area from the balance of the hill, the slope?  
28 A. Well, for clarity, I'm describing the 25 landslide  
29 area, pre-2025 landslide is --  
30  
31 Q. Yes.  
32 A. Okay.  
33  
34 Q. Thank you  
35 A. It was significantly steeper.  
36  
37 Q. I see.  
38 A. Do you wish me to elaborate?  
39  
40 Q. If you would.  
41 A. The area of the 22 landslide was measured at about an  
42 average slope of 35 degrees. I would say in the area of  
43 the 25 landslide the slope towards the north, so towards  
44 3 Penny Lane, the house that was destroyed in the January  
45 14, 2025 landslide, was of a similar slope. But as you  
46 came south towards our property, towards where the head  
47 scarp was and where the significant loss of soil was,

1 areas - parts of that hillside were approaching I would say  
2 60 degrees, which could be verified by looking at contour  
3 maps, but you could not scale down that top area, whereas  
4 you could actually scramble down the entire area of  
5 the 2022 landslide.  
6

7 Q. I see. You've anticipated my next question, which was  
8 the general usage of this land. You can see at least from  
9 this photograph what looks to be a well-manicured garden in  
10 the areas immediately surrounding the home. But the  
11 balance of the land, it's not quite clear the extent to  
12 which it was or could be used. Can we start with before  
13 the 2022 landslides. The area where the 2022 landslide  
14 occurred, was that land capable of being used by you as the  
15 owner of the property or did it just lie fallow?

16 A. More the latter. I'd say there's degrees in that  
17 response. There was a pathway that went through that area  
18 of the 2022 landslide down to the road. So you could use  
19 that. Adjacent that pathway in one small area there was an  
20 existing garden bed. But it was not frequently used. This  
21 is quite a steep slope, so you would tend to traverse it  
22 rather than use it.  
23

24 Q. We'll see some pictures later of the slope from  
25 different angles, some of which contain stairs. Were there  
26 stairs down to the area of the 2022 landslide?

27 A. Yes, there were.  
28

29 Q. All right. And one got to those stairs how? Are you  
30 able to describe that by reference to this photograph?

31 A. Yes, certainly. In fact you can see it. If you go  
32 to - if you look at the western boundary of our property  
33 where it adjoins 14-16 View Point Road you can see like a  
34 curved path - yes, thank you. That curved pathway where  
35 the cursor is now starts on our garden.  
36

37 Q. Yes.

38 A. So you walk off the lawn onto a 100-year-old stone  
39 staircase, which is exactly where the cursor is now, and  
40 down a gravel pathway, if you keep tracking along, to the  
41 stairs which are there.  
42

43 Q. Yes.

44 A. And then, if you came back towards the west, the  
45 pathway essentially zigzags down the hillside, and in fact,  
46 if you keep moving the cursor to the west and then down a  
47 little bit and traverse to the east, right through that

1 patch there is where the pathway was.

2

3 Q. Yes.

4 A. And then it meandered its way down to the eastern  
5 Penny Lane entrance adjacent 3 Penny Lane and 2 Penny Lane.

6

7 Q. And did you or your wife sometimes use that path to  
8 cut down to Penny Lane?

9 A. Oh, yes.

10

11 Q. I see. And do I take it from your earlier evidence  
12 that, unlike the area that you've just described, the area  
13 of the 2025 landslide was too steep to be used for  
14 anything?

15 A. Absolutely correct. Could not use it for anything.  
16 Far too steep. Difficult to maintain.

17

18 Q. Thank you. I want to ask you some questions now,  
19 Mr Borghesi, concerning the subject of water, and I want to  
20 do it by reference to observations that you have made about  
21 water flows in the area. To begin with, to make it clear,  
22 I just want to talk about the area - sorry, about  
23 observations you made in the time that you were using the  
24 property but not permanently resident there - that is, May  
25 2014 to December 2020 - and then we'll come to any  
26 observations that you made once it became your permanent  
27 residence. You describe in your witness statement at  
28 paragraph 9(a) that you regularly observed a flow of water  
29 that appeared to originate from 1 and 5 Prospect Hill Road.  
30 Do you have a recollection of making that observation in  
31 your witness statement?

32 A. Yes, I do.

33

34 Q. All right. Could you just explain to the chair in  
35 your own words, so as best as you can remember it, what  
36 your recollections are about the observations you had made  
37 as to the flow of water and its emanation from that  
38 location?

39 A. So starting from our property and the kerb in front of  
40 our property, which is to the south of our house here, ever  
41 since purchase in May 2014 in our frequent returns back to  
42 Australia from the US we - and irrespective of which time  
43 of year it was, there was a continuous flow of water down  
44 that northern kerb. We never saw it dry irrespective of  
45 extended periods of dry weather, and obviously during wet  
46 weather it would actually flow a little bit faster.

47

1 Moss and algae were growing in that gutter because of  
2 the continuous flow. As you track to the east, so to the  
3 right of this picture as we're looking at it, to the top of  
4 the road this continuous flow of water was coming up and  
5 out of the concrete culvert, which is the culvert that sits  
6 in the stormwater drain or the kerb, the kerb as it was,  
7 and it flowed down the hill from that area. If you tracked  
8 further to the east of that culvert, so you're going  
9 further uphill of View Point Road, the kerb there was dry,  
10 unless it was raining, of course.

11  
12 And then if you crossed Prospect Hill Road and headed  
13 towards the properties of 1 and 5 Prospect Hill Road there  
14 was always saturated ground in that area, heavily saturated  
15 ground, and by that I mean the nature strips were not  
16 trafficable. You couldn't walk on them without getting  
17 bogged. And so through inference we always felt at that  
18 time - because we're not aware of anything going wrong or,  
19 you know, major problem with this, the inference was  
20 there's possibly a natural spring in that area, and through  
21 conversations with neighbours in the areas we've heard  
22 about springs in that area, including the people who were  
23 constructing new houses on 1 and 5 Prospect Hill Road.  
24 There was a spring in that area which they had to manage  
25 through civil works and water-capturing works. So the  
26 inference was that spring was likely, perhaps very likely,  
27 the source of this continuous flow of water.

28  
29 So, for clarity, if I may, Mr Costello, we were not  
30 talking about stormwater runoff or rainwater runoff. We're  
31 talking about a continuous flow of water that appeared to  
32 come from the area of 1 and 5 Prospect Hill Road.

33  
34 Q. And when you say "continuous" you mean continuous  
35 insofar as you observed it, but your observations were not  
36 continuous because you weren't at the property at all  
37 times?

38 A. Correct. So continuous in the periods that we were  
39 there.

40  
41 Q. Yes.

42 A. Yes.

43  
44 Q. And do you have a recollection of if - in the periods  
45 that you were there between May 2014 and December 2020, if  
46 any of those periods were what might be fairly described as  
47 dry periods?

1 A. I could not answer that question accurately because we  
2 weren't there for extended periods of time. I would assume  
3 there were extended periods of dry weather.  
4

5 Q. Okay. Did you in that period make any observation as  
6 to relative changes in the volume of water that flowed?

7 A. So while we were present during our return trips,  
8 which might typically last between two and four weeks, the  
9 volume of water flowing in that gutter, irrespective of  
10 which time of year it was, was remarkably consistent, and  
11 we estimated it at about roughly 10 litres a minute.  
12

13 Q. I see. Now, once you arrived at the property on a  
14 permanent basis in December 2020 did you continue to  
15 observe this flow of water?

16 A. Yes, I did.  
17

18 Q. All right. And in the period between December 2020  
19 and the 2022 landslides did you notice any change in the  
20 volume of water?

21 A. No, I did not.  
22

23 Q. Do you recall if during that period there had been any  
24 dry spells?

25 A. I am sure there were dry periods, the duration of  
26 which I could not confirm.  
27

28 Q. But, insofar as there were dry periods, you didn't  
29 notice any reduction in the volume of water flowing?

30 A. Yes, that is correct.  
31

32 Q. Thank you. Did you have any view about whether any of  
33 this water entered your land?

34 A. Yes, absolutely.  
35

36 Q. All right. And did you have a view about where it  
37 entered your land?

38 A. Yes, I did.  
39

40 Q. All right. Could you explain that to the chair,  
41 please?

42 A. On the western boundary of our property, so the yellow  
43 boundary line is a good way to describe where I wish to  
44 direct Madam Chair to, and where that western boundary  
45 line, the yellow line, intersects the street boundary line  
46 there's a lower driveway in that area, and we were of the  
47 view that water was gathering in that area because of

1 the way that it was being controlled to flow down View  
2 Point Road and getting into the hillside and seeping in  
3 line with where the 2022 landslide was because we had  
4 witnessed constant saturation of the 2022 landslide area  
5 and the seeps that we saw earlier today. That area was  
6 wet. So we were forming the view that the cracked kerb -  
7 severely cracked kerb on View Point Road with this  
8 continuous flowing water was leading to saturation of the  
9 hillside where the 2022 landslide occurred.

10  
11 Q. All right. Was it as a consequence of that increased  
12 saturation that you installed some agi-drains?

13 A. Yes, it was.  
14

15 Q. All right. And roughly where did you install those on  
16 the property? And, if it assists, there is a pointer there  
17 if at any point you want to - it's directly in front of  
18 you. It's next to the screen.

19 A. Right. So could you repeat the question?  
20

21 Q. Whereabouts did you install the agi-drains, roughly?

22 A. There and there.  
23

24 Q. So the first part you pointed to, that's above the  
25 stairs that --

26 A. Yes.  
27

28 Q. Along the path on the way to the stairs?

29 A. Correct. I'm just trying to nail it. Right there.  
30

31 Q. All right. Thank you.

32 A. Above the stairs, yes.  
33

34 Q. I see. And where was the second installation? Was it  
35 further down the slope?

36 A. Yes, about there. About where that is. Just on the  
37 edge of that black mark, so maybe back towards the middle,  
38 about there.  
39

40 Q. Right. And you installed those because you were  
41 concerned with the volume of water that was coming into  
42 your property?

43 A. No.  
44

45 Q. The agi-drains?

46 A. No, the reason - may I answer?  
47

1 Q. Please. Yes.

2 A. That wasn't the reason. The reason I installed them  
3 was we couldn't use the pathway. It was too wet.

4  
5 Q. Yes.

6 A. And we felt it was unsafe if you walked down that  
7 pathway. Areas of it did not have a handrail, and it was  
8 saturated. So we wanted to make it trafficable. So we  
9 controlled that water. We were concerned about the water,  
10 but we were controlling it so we could use the pathway.

11  
12 Q. All right. We might just call up a picture of the  
13 drains we're talking about. It's RES.0001.0003.0001, and  
14 it's at page 0008. Now, this is one of the exhibits to  
15 your witness statement, Mr Borghesi. Is what we're looking  
16 at here, is this part of the path?

17 A. Correct.

18  
19 Q. And this is the type of saturation that you were just  
20 speaking of?

21 A. It is.

22  
23 Q. And we can see an agi-pipe there. Is that one of the  
24 ones you had installed?

25 A. That was a piece of agi-pipe that I was, I guess,  
26 assessing whether I'd put it in the channel that you can  
27 see that is dug - started to be dug to the left of that  
28 picture underneath the square wire.

29  
30 Q. I see, yes.

31 A. So I took the photograph there to see if I could lay  
32 them in a way that might attract that water.

33  
34 Q. And is this the location close to the top of the  
35 steps?

36 A. Yes, it is.

37  
38 Q. Thank you. Could we go to the next page of that  
39 document, please. Is this an example of one of the  
40 agi-drains that you had installed in that location?

41 A. Yes. This is actually the same location as the  
42 previous photo, taken in the opposite direction, after  
43 I installed those agi-drains to capture the water.

44  
45 Q. And so the idea of these drains is that the water will  
46 flow - it will be captured in the channel, it will flow  
47 into the agi-pipe and then flow out; is that the basic way

1 that it works?

2 A. Yes. I would say so that I didn't have a wet pathway,  
3 not interfering with where the water was going but just  
4 getting it below the ground level so you could walk down  
5 there.

6  
7 Q. And where did the agi-pipe discharge to?

8 A. On the left-hand edge of that photo you can actually  
9 see the end of the agi-drain. It was left in that fashion.

10

11 Q. And so that is discharged in the general direction of  
12 the downslope?

13 A. Correct, where it was previously flowing.

14

15 Q. You say that's where it was previously flowing because  
16 you had seen water trickling or for some other reason?

17 A. The former, trickling water in that area, per the  
18 photographic evidence that we had up previously.

19

20 Q. Do you mean including as to seeps, evidence of seeps,  
21 or do you --

22 A. Could you repeat that, please?

23

24 Q. Do you mean evidence of seeps?

25 A. Correct, yes.

26

27 Q. And was the plan with the agi-pipes successful in that  
28 did you find the path dried up?

29 A. It did.

30

31 Q. Thank you. All right. We'll come back to water soon,  
32 but for now I just want to move to a separate topic. If  
33 that document could be taken down from the screen, please.  
34 Mr Borghesi, you will have heard me say in the course of my  
35 opening address to the chair that there are a number of  
36 avenues of enquiry that the counsel assisting and  
37 solicitors assisting have formed the view needed to be  
38 considered?

39 A. I did.

40

41 Q. And one of those avenues of enquiry concerned  
42 vegetation removal?

43 A. I heard that.

44

45 Q. And did you hear the exchange between myself and  
46 Mr Pope about the possibility that there had been removal  
47 of trees on your property?



1 A. I did.

2

3 Q. All right. I want to ask you some questions in  
4 connection with that. Can I do so first by calling up a  
5 photograph. It's MSC.5000.0001.0639. If I could have  
6 page 0699, please. All right. Now, if that could be blown  
7 up, thank you. Now, Mr Borghesi, you will recall that when  
8 Mr Pope gave his evidence I had an exchange with him about  
9 this photograph?

10 A. Yes, I do.

11

12 Q. When you were watching from home were you able to see  
13 this photograph on the screen?

14 A. I was.

15

16 Q. Okay. Thank you. This is said to be a Google Street  
17 View photograph, the bottom being October 2022 and the top  
18 being February 2018. February 2018 was a period before you  
19 had moved into the property on a permanent basis, and by  
20 October 2022 you had been in for approaching two years; is  
21 that correct?

22 A. That is correct.

23

24 Q. All right. Now, in this photograph which has been  
25 annotated at the top there are three arrows pointing to  
26 what appear to be three separate trees, with the commentary  
27 that in the later 2022 photograph those trees are not  
28 visible. And do you recall I asked Mr Pope some questions  
29 about those trees?

30 A. I do.

31

32 Q. All right. Before I ask you any specific questions,  
33 would you like to make some comment about these  
34 photographs?

35 A. About the trees specifically?

36

37 Q. Yes.

38 A. Yes, I can describe what I think's happening here.

39

40 Q. Thank you.

41 A. I might have to use the pointer.

42

43 Q. Might I ask you one question before you start. It's  
44 very difficult in a photograph like this to have any sense  
45 of scale. Are these three trees, if it's in fact three  
46 trees being pointed to, near to each other?

47 A. Not at all.

1  
2 Q. Okay. Thank you. You give your explanation,  
3 Mr Borghesi, and then I'll ask you further questions.  
4 A. This tree is up adjacent the garage of our property,  
5 which you saw on the previous plan; this tree here is right  
6 down adjacent 3 Penny Lane; and this tree here is up on our  
7 property to the west of the 25 landslide area but not in  
8 the 25 landslide area.  
9  
10 Q. So the west of but not in?  
11 A. But not in, yes.  
12  
13 Q. Thank you.  
14 A. Shall I keep going?  
15  
16 Q. Yes, please.  
17 A. So the distance between that tree and this tree would  
18 be 30 metres. The distance between this tree and this tree  
19 would be probably another 30 metres. So, while it all  
20 looks like these trees in particular are together, they're  
21 not. This tree was overhanging this property, and this  
22 tree is right up on the slope to the west of the 25  
23 landslide area.  
24  
25 Q. I see. So let me be clear about this. Are any of  
26 these trees in the 2022 landslide area?  
27 A. Nowhere near the 22 - no, not at all. Long way from  
28 the 22 landslide area.  
29  
30 Q. All right. And are any of them in the 2025 landslide  
31 area?  
32 A. The - let me think for a moment. This tree here would  
33 be just above the current failure area, if you like, at the  
34 top of the head scarp of the 2025 landslide area.  
35  
36 Q. Yes. That tree looks to be reasonably close to your  
37 neighbour's property at 6 View Point Road?  
38 A. It is.  
39  
40 Q. Is it in the gap, if you like, between their property  
41 and yours?  
42 A. No, it was just on our property.  
43  
44 Q. Just on your property. Can I take you to another page  
45 in that same document. It's .0660. Thank you. And if  
46 paragraph 65 could be exploded. This is in a part of  
47 Mr Pope's report of 11 June 2024 where he's dealing with

1 the mechanisms of failure, and he starts by noting that  
2 trees have been removed in 2021. If we just pause there,  
3 do you accept that much of the paragraph to be accurate?  
4 A. No, I do not.  
5  
6 Q. How would you describe what had occurred with those  
7 trees?  
8 A. I would say one tree was removed.  
9  
10 Q. He goes on to say "including a large mature gum". Is  
11 that the tree that you accept had been removed?  
12 A. No, that's a false statement, what he has here. There  
13 was no large mature gum removed.  
14  
15 Q. Was there a large mature gum that was pruned?  
16 A. Yes, definitely.  
17  
18 Q. All right. And would you accept that the pruning was  
19 significant, it was a significant amount of the tree?  
20 A. Yes, I would say so. And if I may elaborate?  
21  
22 Q. Please.  
23 A. We had an arborist come in to that - one of those  
24 large gums we're looking at. It was suffering severe  
25 dieback. We were trying to protect the tree. So the  
26 arborist came in and lopped it fairly severely in an effort  
27 to try to encourage regrowth lower down the trunk, which to  
28 this day has been highly successful. So that tree is still  
29 alive. But it was trimmed because of dieback, and it's  
30 coming back vigorously.  
31  
32 Q. All right. Now, although - sorry, you said before  
33 that one of the trees was in the 2025 landslide area?  
34 A. Correct.  
35  
36 Q. Was that the large mature gum?  
37 A. No.  
38  
39 Q. How would you describe the tree that was in that area?  
40 A. It was a cow itch tree.  
41  
42 Q. And was it a large tree?  
43 A. I would say it was quite large. It was starting to  
44 overhang the neighbouring property, causing issues, so we  
45 removed it.  
46  
47 Q. I see. Can you see there that Mr Pope goes on to say

1 that in his opinion "tree removal is a significant  
2 conditional event that has occurred at the site and suction  
3 will change in the escarpment slopes over a period of  
4 12 months to 5 years from tree removal. Trees typically  
5 influence the soil moisture over a distance of 1 to 2 times  
6 the height of the tree. In my opinion the landslide area  
7 is well within the influence zone of removed trees." Do  
8 you see that?

9 A. Yes, I do.

10  
11 Q. All right. Now, although you are an engineer,  
12 I presume that this particular topic is outside your area  
13 of particular expertise?

14 A. Correct.

15  
16 Q. Would that be fair? But, that not being so, is there  
17 any observation that you would make about anything that  
18 Mr Pope has said there?

19 A. I would. I'd say the inference that there was  
20 multiple trees removed is not correct. There was a  
21 significant amount of tree trimming done on our property.  
22 The gum that we talked about was trimmed to try to keep it,  
23 and there was - the other gum that we pointed to or  
24 I pointed to in the photograph that you put up which was  
25 close to number 3 Penny Lane, where the previous owner had  
26 requested that we trim it because he was fearful of that  
27 tree dropping branches and debris on his house. So I do  
28 take exception to Mr Pope's statements here implying there  
29 was significant tree removal. The only tree that was  
30 removed was that singular tree, in the cow itch tree, which  
31 was replanted with five additional trees, I point out.

32  
33 Q. What type of trees was it replaced with?

34 A. I couldn't name the tree. I was hoping you wouldn't  
35 ask that question, but they're effectively - and I'm sure  
36 Madam Chair would appreciate this - screening trees.

37  
38 Q. I see.

39 A. We have an adjacent property, number 6, which  
40 significantly overlooks our property. So when we removed  
41 the cow itch tree, which was creating a screen, we  
42 immediately replaced it with a number of trees to  
43 re-establish the screen. Furthermore, I'm not quite sure  
44 what Mr Pope was getting at here, this is only the 25  
45 landslide, but there was no trees whatsoever removed in the  
46 22 landslide area.

1 Q. Yes. Thank you. Is it right that, given the height  
2 of the next door property at 6 View Point Place, the trees  
3 that you have planted there are designed to be trees that  
4 will grow quite high?

5 A. Correct. Six to eight metres.  
6

7 Q. Thank you. Can I show you another photograph, please.  
8 It's in a different document. It's MSC.5000.0001.1206.  
9 And if we could go to 1222, please. Madam Chair, these are  
10 all documents that have already been tendered. If the two  
11 photographs could be blown up, please. This, Mr Borghesi,  
12 comes from an earlier report of Mr Pope that was concerned  
13 with risk to life, and he is here relying on different  
14 images but identifying the fact of tree removal, again not  
15 in the 2022 landslide area but tree removal from the slope  
16 generally. Can you see that both of these pictures have a  
17 2021 date?

18 A. Yes.  
19

20 Q. The earlier in April, at the end of April, and the  
21 latter in September. Is it right that there was tree  
22 removal on your property in that period?

23 A. No, I would call it tree trimming.  
24

25 Q. I see. So what is identified in the lower picture  
26 there as tree removal you would not accept that as an  
27 accurate characterisation?

28 A. I would not accept that as an accurate  
29 characterisation.  
30

31 Q. And, to be clear, do you accept that - sorry,  
32 I withdraw that. To be clear, do you say that any trees  
33 were removed at all from the 2022 landslide area?

34 A. There were no trees whatsoever removed from the 2022  
35 landslide area.  
36

37 Q. And your evidence is that in the 2025 landslide area  
38 there was one tree removed?

39 A. Correct.  
40

41 Q. And it was a tree of a reasonable height, I think you  
42 said?

43 A. Correct.  
44

45 Q. Could you estimate the height of the tree?

46 A. 10 metres.  
47

1 Q. And what was the reason for its removal?  
2 A. It was starting to lean both over our property and  
3 over our neighbouring property. Our neighbour was quite  
4 keen to have that tree removed. In fact he had trimmed it  
5 on his side previously. It was becoming a hazard because  
6 of its lean.  
7  
8 Q. That tree was quite high up the slope then, was it?  
9 A. It was on flat land. It was not in the gully. It was  
10 on the flat land, yes, at the top of where the - if you  
11 want me to describe it I can point to it.  
12  
13 Q. Please.  
14 A. I should get this right. There. Pretty close to the  
15 kink in the fence.  
16  
17 Q. That's where the tree was removed?  
18 A. Actually let me just think for a moment. No, it would  
19 have been back more this way, about there, on the - if you  
20 extended this stone wall to the fence line there it was to  
21 the south. So, yes, probably even a little further south.  
22 In that area there.  
23  
24 Q. I see.  
25 A. Not in the slope. On the flat area.  
26  
27 Q. Now, just to close off on this topic, can I ask a  
28 couple of further questions. Are you aware of whether or  
29 not there is a vegetation protection overlay in respect of  
30 your property?  
31 A. Vegetation protection?  
32  
33 Q. Overlay.  
34 A. Yes, I am. Yes.  
35  
36 Q. There is or there is not?  
37 A. I believe there - I know there is a - I'm not  
38 completely aware of the definition. However, I would say  
39 generally, yes, that there is a vegetation protection  
40 overlay on the property.  
41  
42 Q. I see. And do you have any understanding of the  
43 extent to which that inhibits your right to interfere with  
44 trees on your property?  
45 A. Yes, I do.  
46  
47 Q. Okay. And do you have any view about whether or not

1 the removal of that particular tree was in accordance with  
2 the restrictions imposed by the overlay?  
3 A. I would say it was consistent with the approvals and  
4 the overlay conditions that were in place for the  
5 renovation works that we did in 2017.  
6  
7 Q. By that do you mean that when you did works in 2017  
8 you obtained a permit from the council?  
9 A. Correct.  
10  
11 Q. And did that permit include provision to remove trees?  
12 A. Correct. May I add one clarification?  
13  
14 Q. Please.  
15 A. You said 2017. The building works that were done  
16 while we were overseas - so we were in absentia - was  
17 between approximately 2015 and early 2018. So the permits  
18 for vegetation removal and for building were in place  
19 through that period. So it's more the 2015 to 2018  
20 timeframe I'm referring to.  
21  
22 Q. Thank you. I think I'm right to say that you obtained  
23 a planning permit from the shire in April 2015?  
24 A. That would be correct.  
25  
26 Q. Does that sound correct to you? And there was another  
27 planning permit issued by the shire in December of 2015.  
28 Do you have a recollection of that?  
29 A. I do, and that would be correct.  
30  
31 Q. And that permit appeared to be in respect of dwelling  
32 additions, alterations, an outbuilding, fencing, and  
33 associated works including retaining walls?  
34 A. Correct.  
35  
36 Q. And so far as I could tell at least that planning  
37 permit appeared to allow for six trees to be removed to the  
38 east of the dwelling; does that sound correct to you?  
39 A. That sounds correct.  
40  
41 Q. And were six trees removed from the east of  
42 the dwelling, so far as you can recall?  
43 A. Yes, I would say that was accurate, keeping in mind  
44 that we weren't present through all that work. So we  
45 weren't sort of watching it every day and counting the  
46 trees.  
47

1 Q. Do you know if the six trees that were approved to be  
2 removed included the larger tree that we've been  
3 discussing?  
4 A. I don't, no.  
5  
6 Q. But, although that permit was issued in December of  
7 2015, is it right that the work wasn't done until some time  
8 later?  
9 A. Correct.  
10  
11 Q. All right. And, sorry, I know that you did say it  
12 before but let me be clear. About when did that work  
13 proceed?  
14 A. Could you just clarify which work you're talking  
15 about?  
16  
17 Q. The work that related to the second planning permit  
18 that was issued on 15 December 2015 for the dwelling  
19 additions, alterations, an outbuilding, fencing, and  
20 associated work including retaining walls?  
21 A. That work would have been completed - to the best of  
22 my memory, not so much knowledge - in early 2018.  
23  
24 Q. All right. That brings us then neatly to the question  
25 of retaining walls. There must be a number of retaining  
26 walls on your property, Mr Borghesi?  
27 A. There are.  
28  
29 Q. Some of which were in situ when you bought the  
30 property in May 2014?  
31 A. Correct.  
32  
33 Q. Others of which have been built since you acquired the  
34 property?  
35 A. Correct.  
36  
37 Q. And others still which you have had installed since  
38 you became permanently resident in the property?  
39 A. Correct.  
40  
41 Q. All right. Now, this can be slightly confusing  
42 because there's a number of retaining walls, and so I want  
43 to try and make sure that we're all understanding at least  
44 the general area of the retaining walls. And we might do  
45 it by reference to this. If perhaps the map at the top of  
46 the screen could just be enlarged. Thank you.  
47



1 Now, Mr Borghesi, I'm just going to read to you a  
2 paragraph from your witness statement, and perhaps you  
3 could indicate where in your property this particular wall  
4 is. You speak about work that you did on the property once  
5 you returned to Australia in December 2020, and one item of  
6 work that was undertaken was installing a retaining -  
7 sorry, this is paragraph 29(d) of your statement,  
8 "Installing a retaining wall less than one metre in height  
9 across the vee" - v-e-e - "of the eastern gully area to  
10 create a level area for a vegetable patch and installing  
11 six garden beds." That's the first retaining wall that's  
12 mentioned in this part of your witness statement. Where is  
13 that retaining wall or where was that retaining wall built?  
14 A. It's hard to pick up on this photograph. From about  
15 there to - from there to there.

16  
17 Q. It goes right across to the boundary with 6 View  
18 Point?

19 A. Yes, right angles off the boundary line.  
20

21 Q. And that's what you describe as the vee of the eastern  
22 gully?

23 A. No. The vee is one on a line which would be the  
24 centre of that gully, which would be about here.  
25

26 Q. Yes.

27 A. So the retaining wall cut across the vee and then  
28 petered out to nothing.  
29

30 Q. I see.

31 A. And this direction peters out to nothing, like a vee.  
32

33 Q. I see. Thank you. And you say that was a retaining  
34 wall of less than one metre in height?

35 A. Correct.  
36

37 Q. You then say in paragraph 29(e) of your statement that  
38 there was "limited backfill used in this area as the  
39 retaining wall essentially created a hard edge to an  
40 already steep hillside edge. The delegated MBS was aware  
41 of this retaining wall and inspected it immediately  
42 following the 2022 landslide." And that remains your  
43 evidence?

44 A. Yes.  
45

46 Q. Thank you. And you then give a photo of the retaining  
47 wall which I'll take you to. I think I need to do it by

1 reference to a different document number. It's  
2 RES.0001.0003.0001, and then it's \_0041. This is the  
3 retaining wall that you've just been speaking of?

4 A. Correct.

5

6 Q. This is it in the construction phase, is it?

7 A. Yes.

8

9 Q. And, just to orientate me, where is the person who's  
10 taken this photograph standing?

11 A. Right on the stone low wall that's sort of angled in  
12 the previous pictures that we saw. So this is at the top  
13 of the head scarp that actually failed in the 25 landslide  
14 area.

15

16 Q. Thank you.

17 A. And we're looking north. You can see 3 Penny Lane in  
18 the top left-hand corner of the photograph.

19

20 Q. Yes. And is this the wall that was then reinforced  
21 by, in effect, a second wall being built just in front of  
22 it?

23 A. Correct.

24

25 Q. And that's the second retaining wall that you speak of  
26 in paragraph 29(f), and I'll read it to you. You say,  
27 "Installing a geotechnically and structurally engineered  
28 wall in November 2022" - which you call the reinforcement  
29 wall - "30 centimetres in front of the old retaining wall  
30 following the existing steep profile of the hillside to  
31 strengthen the existing retaining wall that had shown signs  
32 of settlement." All right. So when was it that you  
33 determined that the retaining wall that you had had built  
34 needed reinforcement?

35 A. Prior to the 22 landslide it was showing some signs of  
36 going out of straightness. So I would say in the  
37 September/October 22 timeframe. And then immediately after  
38 the 22 landslide we decided that needed to be reinforced.

39

40 Q. This first retaining wall, what was it built of?

41 A. Timber and steel columns tied back to the existing  
42 soil profile, which is where the grass is.

43

44 Q. And was the reinforcement wall built of the same  
45 material?

46 A. No.

47

1 Q. What was the reinforcement wall built of?  
2 A. Steel columns, same material going into the ground,  
3 but instead of timber sleepers they used concrete sleepers.  
4  
5 Q. I see. And your evidence is that the reinforcement  
6 wall was 30 centimetres in front of the pre-existing  
7 retaining wall, but otherwise of the same height?  
8 A. Yes.  
9  
10 Q. And you've given a photograph of the reinforcement  
11 wall after it's been constructed, and that might be I think  
12 the next page in that same document?  
13 A. Correct.  
14  
15 Q. If that could just be blown up, please. So this is a  
16 post-completion photo of the reinforcement retaining wall?  
17 A. Correct.  
18  
19 Q. And this is taken from where? The top of the wall?  
20 A. Yes, from the decking area to the west of the  
21 retaining wall directly in front of our house, actually.  
22  
23 Q. I see. And you would accept, wouldn't you, that if  
24 one was to stand at ground level with the retaining wall,  
25 that is at the base of the shot there, that retaining wall  
26 is well more than one metre in height?  
27 A. It is.  
28  
29 Q. So when you say that the retaining wall was less  
30 than - sorry, when you say the original retaining wall was  
31 less than one metre in height, are you measuring it from  
32 one side and not the other?  
33 A. The original retaining wall was restraining or, if you  
34 like, protecting one metre of soil elevation. So it was  
35 only one metre in height. But, because of the steepness of  
36 the slope here, when you come 30 centimetres in front of  
37 the original retaining wall it naturally follows down the  
38 slope and becomes longer, but it didn't make the soil  
39 height any different.  
40  
41 Q. All right. Well, we'll come back to the soil height  
42 in a minute. But, in terms of the height of the wall  
43 itself, if one was to measure from the base of the wall to  
44 the top of the wall how high would that be?  
45 A. Just under two metres.  
46  
47 Q. All right.

1 A. At its tallest point.

2

3 Q. At its tallest point. But not a uniform height all  
4 the way across?

5 A. No.

6

7 Q. And did you receive any advice as to whether a  
8 building permit was necessary for this wall?

9 A. No, we did not.

10

11 Q. Did you have any view about whether a permit was  
12 necessary?

13 A. Yes, I did.

14

15 Q. What was your view?

16 A. The view that we were not altering the natural soil  
17 level by more than one metre caused us to consider that  
18 this was compliant, not requiring a permit.

19

20 MR COSTELLO: I was hoping to finish on this topic,  
21 Mr Borghesi, but I don't think I will. Is that a  
22 convenient time?

23

24 CHAIRPERSON: Yes.

25

26 **SHORT ADJOURNMENT**

27

28 MR COSTELLO: Thank you, Madam Chair. Mr Borghesi, before  
29 the break we were discussing the reinforcement wall and its  
30 height, which you've accepted is just in excess of two  
31 metres at its highest point from the low-side --

32 A. I think I said just below two metres.

33

34 Q. Did you say just below two metres? I apologise. You  
35 had made a comment concerning the soil level and that the  
36 soil level - did you say the affected soil level was not  
37 more than one metre?

38 A. Correct

39

40 Q. All right. Could you just explain what you mean by  
41 that, please?

42 A. The original retaining wall was built against a very  
43 steep slope such that in order to create, like, a hard edge  
44 for a veggie patch we only needed one metre or less of  
45 retaining wall because of the steepness of the slope. When  
46 we reinforced the original retaining wall by building a new  
47 wall 30 centimetres in front of it, because of the

1 steepness of the slope the length of that wall becomes  
2 significantly longer. But the soil profile doesn't change.  
3 So we're not retaining more than the one metre or less of  
4 soil that was the case with the first wall.

5  
6 Q. I see. At some point in time did you become concerned  
7 that even the reinforcement wall was becoming unstable by  
8 reason of the soil situation in front or underneath it?  
9 A. Yes, we did.

10  
11 Q. When was that, roughly?  
12 A. In fact when this photograph was taken.

13  
14 Q. All right. Perhaps I can draw your attention to some  
15 features in this photograph then and you can make whatever  
16 comment you want. It appears to me that perhaps a third of  
17 the way up from - moving from bottom to top along the base  
18 of the retaining wall about a third of the way up it looks  
19 as though there might be a crack there.  
20 A. There is.

21  
22 Q. But it's difficult to know, not being familiar with  
23 the terrain, whether that's what it is or if it's something  
24 else. But is that a crack?  
25 A. Yes, it is.

26  
27 Q. Is there perhaps a large rock?  
28 A. Yes, there is - that's actually a piece of, like,  
29 paving stone.

30  
31 Q. I see. So, to be clear, there's a small shrub towards  
32 the bottom of the photograph. It's got some white flowers  
33 on it?  
34 A. Yes.

35  
36 Q. Behind the shrub is a paving stone?  
37 A. Correct.

38  
39 Q. And then continuing along up the path of the wall  
40 there's then something that looks a bit like a crack?  
41 A. Yes, the cursor is on another crack, actually.

42  
43 Q. Yes. There's one before that; yes, there.  
44 A. Correct.

45  
46 Q. Is that a crack?  
47 A. Yes, it is.

1  
2 Q. All right. Is that just something that occurred by  
3 reason of the construction of a wall?

4 A. No.

5  
6 Q. All right. Perhaps you could just explain when those  
7 cracks developed and make any comment that you would wish  
8 to make about the cracks?

9 A. Okay. Just to orient Madam Chair I might speak from  
10 left to right across this photograph. So there is a gum  
11 tree you can see on the left-hand side of the photograph.  
12 That's a good starting point. And if you go down you can  
13 see the head scarp falling away. So come down and go a  
14 little bit to the left. Yes. You can see the dirt there.  
15 This is the head scarp failing after the January 5  
16 landslide.

17  
18 So what we were observing in this week and a half  
19 period between January 5 and January 14 is a gradual and  
20 disturbing progression of this head scarp towards the  
21 retaining wall. And it was eroding the head scarp because  
22 the soil was deeply saturated and eating away at the head  
23 scarp such that that gum tree, that gum tree which we were  
24 very keen to keep, roots were exposed. You can almost see  
25 the roots exposed where the cursor is now. And we were  
26 monitoring the head scarp degradation to see if it would  
27 take out the gum tree. That's what we thought the next  
28 step of degradation would be with this saturated soil.

29  
30 Q. Is that gum tree there - it's hard to tell the angles,  
31 but is it on a lean there or is that just the angle of the  
32 photograph?

33 A. It's more to do with the wide angle nature of  
34 the photograph.

35  
36 Q. Thank you.

37 A. It may have had a slight lean at the base, but it was  
38 effectively vertical.

39  
40 Q. Thank you.

41 A. So it is - in fact at this point it had shown no signs  
42 of movement. So its root structure was holding it in  
43 place.

44  
45 If you move the cursor towards the right to a timber  
46 retaining wall - there - this was highly disturbing to us.  
47 You can see a crack opening up about 100 millimetres wide

1 behind that retaining wall. So what was happening is the  
2 soil between the cursor and the head scarp, which is to the  
3 left of the gum tree, is slumping down, going down the  
4 hillside. And, in addition to that, what was very  
5 concerning to us was if you go to the right, to the  
6 retaining wall, to those cracks you were describing, these  
7 effectively opened up overnight.  
8

9 So what's happening here is the soil is falling away  
10 from the retaining wall and sliding down the hill, and the  
11 retaining wall's doing its best to stand up. At this point  
12 in time we also noticed the fence - between ourselves and  
13 6 View Point Road was a paling fence --  
14

15 Q. And, just to be clear, 6 View Point Road is to the top  
16 right of the screen?

17 A. Correct. If this photograph was taken looking up you  
18 would see 6 View Point Road in full - in all its glory. So  
19 what was I going with? So those cracks were opening up.  
20 Yes, there's a fence. You can't see it in the photograph.  
21 Right up the top of that photograph there are screening  
22 trees in that planting box, and there is a timber paling  
23 fence to the right of the retaining wall, so off shot  
24 probably by about two metres. The fence palings opened up  
25 by 100 millimetres overnight. So that opening up of the  
26 fence palings was telling us we were getting movement  
27 basically at number 6 View Point Road and very much on that  
28 property as much as ours. Despite the fact that this  
29 landslide on January 14 is described as being on 10 View  
30 Point Road, there was a lot of movement happening on 6 View  
31 Point Road, unfortunately. So we were monitoring this.  
32 And this picture, of which I can't recall the exact time  
33 and date but it was within I'd say 24 hours of the major  
34 collapse, we were watching this soil move away and down the  
35 hill.  
36

37 Q. Can I just check on a couple of other aspects of this  
38 photograph. So we now well understand the reinforcement  
39 wall that's there. There's another wall that's obvious in  
40 the shot towards the top of the photograph. That's another  
41 retaining wall, is it?

42 A. No, I wouldn't describe it as a retaining wall.  
43 That's a planter box.  
44

45 Q. I see.

46 A. So it's built on four sides. If you look to the  
47 left - you can see the steel post there.

1  
2 Q. Yes.  
3 A. If you go to the top of that steel post and then track  
4 towards the top of the page you can see it's got a front  
5 edge. And you can't see it because there's a tree in the  
6 way. From that back corner and heading back to the right  
7 there's another wall. So it was constructed as a box.  
8  
9 Q. I see. But is it built up with soil to the top?  
10 A. Yes, and it's got trees in it.  
11  
12 Q. I see. And this may have no significance but it looks  
13 as though there's a hole in the wall of that - what you've  
14 described as a planter box. Is that what that is?  
15 A. Yes.  
16  
17 Q. And is that something that occurred as a consequence  
18 of the movement of the soil or is that just a feature of  
19 the planter box as it existed?  
20 A. The answer is yes to both your points. The lower  
21 piece of timber to the left of that hole was cut short, and  
22 there's another post in the ground right in that area. And  
23 then as this soil - so that timber is cut short. It  
24 doesn't go all the way back to the right. As this soil is  
25 moving away it's opening up what was already maybe a small  
26 gap there that might have been, when it was built,  
27 50 millimetres. It's now opening up to 100 millimetres.  
28  
29 Q. Was there anything else arising from that photograph  
30 that you wanted to make clear to the chair?  
31 A. Yes, there is, if I may.  
32  
33 Q. Go ahead, please.  
34 A. What was interesting to us as owners of this retaining  
35 wall was there's no sign of any moisture or water emanating  
36 from the retaining wall. And the only evidence of water  
37 that we have detected since January 5 was way down the  
38 slope. So we thought it was important to point out that  
39 the retaining wall itself was not failing. What was  
40 happening was the soil that creates the buttress for the  
41 retaining wall working was being taken away from it. And  
42 there was no evidence that water was emanating from the  
43 retaining wall. It was the material in front of it that  
44 was collapsing because of this water deep down the slope  
45 that was eroding the head scarp slowly. It was eating away  
46 from in front of and beneath the retaining wall to a point  
47 where it just fell over and went down the hill.



1  
2 Q. How do you know that it was eating underneath the  
3 retaining wall?  
4 A. I think that's easy to demonstrate, Mr Costello. The  
5 building surveyor who attended this property between  
6 January 5 and 14, just prior to the landslide, was down on  
7 the area of that paving stone with his iPhone sticking his  
8 hand under the retaining wall taking photographs, and then  
9 coming up to the top of the retaining wall and saying, "The  
10 holes are getting bigger."  
11  
12 Q. And who was that person?  
13 A. Matt Glover.  
14  
15 Q. Was it at or about the same time that you had this  
16 work done that you had a hose installed further down the  
17 slope away from the house?  
18 A. No, I do not know to what you're referring,  
19 Mr Costello.  
20  
21 Q. Sorry, I said a hose. I meant a tap. Was there a tap  
22 installed away from the house further down the slope so  
23 that you could water plants?  
24 A. No. If I may elaborate?  
25  
26 Q. Please.  
27 A. I know I'm not allowed to say "with all due respect",  
28 but I think you're confusing - there may be confusion,  
29 pardon me, between the 22 landslide and the 25 landslide.  
30 So what you may be referring to is a hose and a tap that  
31 was installed in the area of the 2022 landslide.  
32  
33 Q. Yes.  
34 A. There's no tap or hose --  
35  
36 Q. That was installed before this work was done, was it?  
37 A. Correct, yes.  
38  
39 Q. Thank you. All right.  
40 A. So may I answer your question, Mr Costello?  
41  
42 Q. Yes, please.  
43 A. There was no hose and tap installed down the hill  
44 here.  
45  
46 Q. There had been a hose and tap installed before the  
47 2022 landslide?

1 A. Correct.  
2  
3 Q. And that hose and tap was damaged by the first 2022  
4 landslide?  
5 A. Correct.  
6  
7 Q. Thank you. And, as a consequence of that damage, some  
8 volume of water at least leaked from the broken pipe?  
9 A. Correct.  
10  
11 Q. And that was a feature that Mr Pope has commented upon  
12 in some of his work?  
13 A. Yes, he has.  
14  
15 Q. You're aware of that?  
16 A. I am aware of that.  
17  
18 Q. And you're aware that Mr Pope points to two  
19 mechanisms, the first 2022 landslide and the second 2022  
20 landslide, and he concluded that the second landslide was  
21 conditional on the fact of the first occurring; you're  
22 aware of that?  
23 A. I am.  
24  
25 Q. And you're aware that it was the break - sorry, it was  
26 the first event that caused the break to the pipe and the  
27 water to flow. And you're aware that Mr Pope did some  
28 calculations as to the possible loss of water from that  
29 pipe?  
30 A. I am.  
31  
32 Q. You're generally aware of what I'm talking about?  
33 A. Yes, I do.  
34  
35 Q. And he concluded - without going into the causal  
36 factors yet but in terms of volume, he concluded that that  
37 that tap might have contributed an amount equivalent to the  
38 amount of rainfall that had fallen in the area by reason of  
39 water leaking from the tap; are you aware of that?  
40 A. I concur. Yes, I am aware of that.  
41  
42 Q. I see. And do you have any comment to make on any of  
43 those findings of Mr Pope?  
44 A. Yes, I do; make perhaps two comments, if I may. Our  
45 geotechnical consultant was never convinced that the 22  
46 landslide occurred in two stages, but there's been,  
47 I guess, evidence submitted by neighbours that it did occur

1 over two stages. So that's the first point I would make.

2

3 The second point I would make is, if we were to agree  
4 that it occurred in two stages, the first landslide severed  
5 the hose pipe. And I think there is conjecture around the  
6 contribution of the volume of water that was leaking from  
7 that hose to the secondary slip, which I recall Mr Pope  
8 even made a comment - which I agree with - is if you have a  
9 severed pipe and it's contributing a volume of water  
10 commensurate to the rainfall event, a severed pipe which is  
11 sitting on the ground is not necessarily saturating a 10-  
12 to 12-metre wide or 8-metre wide swathe of landslide area.  
13 What tends to happen, as Mr Pope I think accurately  
14 articulated, is the pipe will tend to channel. It might be  
15 flowing a large volume of water, but it's channelling in  
16 one very narrow area going down the landslide.

17

18 I believe in one of the photographs we saw of the 2022  
19 landslide you can actually see a deep channel on the  
20 eastern side of the landslide which is highly likely to be  
21 where that water was flowing. So the point I'm trying to  
22 make is the contribution of that failed pipe to the second  
23 slip is open to differing geotechnical arguments based on  
24 whether or not it would have actually saturated the entire  
25 width of the initial slip or it would have just been  
26 channelling down next to it.

27

28 Q. Yes. And, in fairness to you, the question might be  
29 made all the more complicated by whether or not the soil  
30 was already saturated; maybe the ability of the soil to  
31 take on further water even?

32 A. Correct. And, if I may add, that was also the view of  
33 our geotechnical consultant, which was there was no way  
34 that water emanating from that pipe could have caused the  
35 level of saturation that he observed in the 2022 landslide.

36

37 Q. All right. We might come to that report now. Before  
38 we do, where were you at the time of the 2022 landslide or  
39 landslides?

40 A. I was with my wife in Melbourne.

41

42 Q. So you weren't present at the property at McCrae when  
43 the landslide occurred?

44 A. Correct.

45

46 Q. And how soon after the landslide occurred did you go  
47 to McCrae?

1 A. The following morning.

2

3 Q. I see.

4 A. So if the landslide did occur in two stages, which is  
5 debatable, it was later that day of the second slip.

6

7 Q. Thank you. Had you been in Melbourne for a long  
8 period?

9 A. No. We were only up there for a short wrist operation  
10 for my wife. So I think it was only overnight. We were  
11 planning for one or two nights. It was only going to be a  
12 short period.

13

14 Q. All right. Thank you. Now, you've mentioned your own  
15 geotechnical consultants on a number of occasions, and  
16 I want to take you now to one of their reports, which is  
17 RES.0001.0003.0001, and it's page 13 of that. This is one  
18 of the exhibits to your witness statement, Mr Borghesi.  
19 Before we get into the meat of that document, could you  
20 explain the circumstances by which you came to retain or  
21 engage CivilTest?

22 A. In response to orders or instructions from the council  
23 to engage a qualified, certified geotechnical expert to  
24 advise us on potential remediation and causation of the -  
25 and for us causation of the 22 landslide.

26

27 Q. This was in general terms connected with make safe?

28 A. Yes.

29

30 Q. Thank you. And in this report, which is described on  
31 the first page there as a technical memorandum, one of the  
32 things that CivilTest are seeking to do is to understand  
33 the causes of the landslide?

34 A. Correct.

35

36 Q. Before you received the CivilTest report, given your  
37 professional training, did you have your own ideas as to  
38 the cause of the 2022 landslide?

39 A. As I had said previously when giving evidence, we had  
40 been concerned about the continuing saturation of our  
41 hillside.

42

43 Q. Yes.

44 A. So we were naturally wanting to understand if that  
45 could be verified or there was an alternative theory.

46

47 Q. I see. If we could move to 0017 within that document,

1 please. Here is where CivilTest go into print on the  
2 causes of the landslide. And you'll see that in the first  
3 paragraph of 3.1 they point to the excessive amount of  
4 precipitation on 14 November and the inadequate management  
5 of the drainage on View Point Road; do you see that?  
6 A. Yes.  
7  
8 Q. And so, while they're not attributing any proportion  
9 to the causes, they are here pointing to two causes which,  
10 in combination, are said to be the result of the - sorry,  
11 said to have caused the landslide?  
12 A. Correct.  
13  
14 Q. It's noted at the start of the second paragraph that,  
15 "On 29 October and 2 November, both of which were sunny  
16 days, there was continuous water flowing along the kerb  
17 drain on View Point Road." And is that a statement that  
18 has you as its source?  
19 A. Excuse me?  
20  
21 Q. Are you the source of that information, do you think?  
22 A. I don't recall. I believe this is an independent  
23 report CivilTest would have made based on - they would not  
24 have probably attended in those two periods.  
25  
26 Q. No.  
27 A. But I cannot - I can't be sure where they got that  
28 information from.  
29  
30 Q. Thank you. In any event, that information is  
31 generally consistent with what you had observed; is that  
32 correct?  
33 A. Yes. No question it's consistent with our  
34 observations.  
35  
36 Q. Yes.  
37 A. I'm just intrigued by the two dates. I don't recall  
38 why they have those two dates.  
39  
40 Q. Yes. Thank you. They then speak of a hump being  
41 built onto the surface of the road to divert water from one  
42 side of the kerb to the other on View Point Road on the  
43 other side.  
44 A. Yes.  
45  
46 Q. Do you know what they're speaking of there?  
47 A. Yes, I do.

1  
2 Q. And do you have a general understanding of when that  
3 was installed?  
4 A. General understanding. Certainly while we were  
5 overseas, difficult for me to pinpoint because we weren't  
6 there when they did it.  
7  
8 Q. Yes.  
9 A. I would suspect it was somewhere between 2015 and  
10 2020. I don't recall it being there soon after we  
11 purchased the property. But certainly around I would  
12 estimate the 2017-2018 timeframe that speedhump went in.  
13  
14 Q. Thank you. They then say, "There were signs of cracks  
15 and bitumen patching along the kerb on View Point Road.  
16 The diverted runoff would then seep into the nature strip  
17 and flow at along the interface of the sandy and clayey  
18 soils following gravity towards the landslide area."  
19 A. Correct.  
20  
21 Q. Now, is that statement there a statement that you  
22 agree with insofar as you've been - you had made your own  
23 observations of the water flow?  
24 A. Yes, it's consistent with the thesis that we had.  
25  
26 Q. You had a concern that, by reason of cracks in what  
27 I might just describe in general terms as council  
28 infrastructure, water was leaving the flow that it was  
29 designed to follow by the infrastructure being in place and  
30 instead travelling in effect into the hill?  
31 A. Correct.  
32  
33 Q. And is that consistent with your experience with the  
34 sodden path where you had installed the agi-pipes?  
35 A. Yes, it is.  
36  
37 Q. Had you ever identified the precise location where  
38 water was coming from that was making that path as sodden  
39 as we saw that it was?  
40 A. Could you just repeat the first part of the question,  
41 please?  
42  
43 Q. Yes, of course. The sodden path where you had  
44 installed the agi-pipes, had you ever identified precisely  
45 where the water that was making that path sodden was coming  
46 from?  
47 A. No, no.

1  
2 Q. Did you know whether it was coming up from under the  
3 ground or whether it was trickling from somewhere else?  
4 A. Coming more laterally onto the pathway.  
5  
6 Q. I see. And that must be consistent with the general  
7 slope of the hill, presumably?  
8 A. Correct. And further down. So laterally across the  
9 pathway, and then below the pathway it was sodden as well.  
10 But where it was sodden below the pathway was of less  
11 concern for us regarding trafficability of the pathway  
12 because it's like a wet slope.  
13  
14 Q. Yes. If we go to the next page there's two  
15 photographs. Perhaps can we deal with the one at the top  
16 first. As you look to this photograph are you able to  
17 immediately identify where that is?  
18 A. Yes, I am.  
19  
20 Q. All right. Where is that?  
21 A. This is the western end of View Point Road.  
22  
23 Q. And where is this relative to your house?  
24 A. The bottom right corner of this photograph would be  
25 essentially our boundary with 14-16 View Point Road. So  
26 those hedges and that gum tree are on John D'Helin's  
27 property at 14-16 View Point Road.  
28  
29 Q. Thank you. Now, there's visible water on the street  
30 there. This is only one point in time. Had you from time  
31 to time seen water in the position that it is there?  
32 A. Constantly. May I clarify?  
33  
34 Q. Please.  
35 A. The speedhump was not always there, to my  
36 recollection. But, since the speedhump was there, at any  
37 point in time we visited this area it would look just like  
38 this.  
39  
40 Q. I see. And so, just to be clear, that water as it  
41 runs across the road is following the path of the speedhump  
42 that is behind it in the shot?  
43 A. Correct.  
44  
45 Q. And I asked you before about the timing of the  
46 speedhump construction. You can't see it now, but in the  
47 commentary underneath that photograph in the report

1 CivilTest at least say that based on Nearmap aerial images  
2 it appears to have been built around 10 years ago from the  
3 date that they had written this report.  
4 A. Okay.  
5  
6 Q. And this report was written in December 2023.  
7 A. Okay. So a bit earlier than I would have thought.  
8  
9 Q. If we could please go to the photograph at the bottom  
10 of the page. Now, you can probably also identify where  
11 this is based on the rope or whatever it is in the shot at  
12 the back?  
13 A. Yes.  
14  
15 Q. So this is also View Point Road, is it?  
16 A. Correct.  
17  
18 Q. Is it View Point Road - this shot's taken in the  
19 opposite direction, is it?  
20 A. Correct.  
21  
22 Q. I see. And how would you describe the state of  
23 the kerb here?  
24 A. Poor condition.  
25  
26 Q. And your concern was that by reason of the kerb being  
27 in this condition that water would in effect seep into the  
28 ground?  
29 A. Correct.  
30  
31 Q. Now, this kerb looks very dry?  
32 A. Correct.  
33  
34 Q. What do we take from that?  
35 A. The speedhump is working.  
36  
37 Q. So do you think this - is this the kerb on the  
38 opposite side of the road to where we saw?  
39 A. Would you like me to elaborate, Mr Costello?  
40  
41 Q. Yes, please.  
42 A. The speedhump is just out of shot. You see that  
43 gentleman on the top right-hand of the photograph?  
44  
45 Q. Yes.  
46 A. The speedhump is there across to the right of shot.  
47 So what's happening is there's no water tracking into this



1 area because, per the previous photograph, the speedhump is  
2 successfully, for want of a better term, directing the  
3 water to the southern kerb, which is why they put the  
4 speedhump in.

5  
6 Q. Yes. Thank you. Now, at various times you've had  
7 communications with the council in respect of the state of  
8 its infrastructure?

9 A. Yes.

10  
11 Q. And I'm aware that there was communication after the  
12 2022 landslide.

13 A. Correct.

14  
15 Q. And I think I'm right to say communication after the  
16 2025 landslide. Had you ever communicated with the council  
17 about this issue before the 2022 landslide?

18 A. No, we had not.

19  
20 Q. Thank you. Now, the council did conduct works in  
21 relation to its stormwater infrastructure in 2023?

22 A. Correct.

23  
24 Q. You're aware of that?

25 A. Very aware of that.

26  
27 Q. All right. Now, are you able to give a general  
28 description of those works so far as you understand how  
29 they relate to View Point Road?

30 A. Yes, I am.

31  
32 Q. Thank you. Would you mind doing so?

33 A. The council commenced a project in May 23 which ran  
34 for about 14 weeks to install for the first time in history  
35 an underground stormwater drain of approximately  
36 300 millimetres diameter from the top of View Point Road,  
37 from the culvert that was previously overflowing, down View  
38 Point Road, across View Point Road in the vicinity of where  
39 the speedhump was, and then out the very bottom of View  
40 Point Road into the Margaret Street area, effectively  
41 undergrounding, capturing the water that was continuously  
42 flowing down the northern kerb into a stormwater drain such  
43 that when they repaired the road and they installed the new  
44 kerbs there was no water to be seen running down the kerb  
45 because they had now decided, presumably, to manage that  
46 continuous water flow in a more appropriate manner.

1 Q. All right. Could I have on the screen, please,  
2 MSC.5000.0001.0639. If we could go to .0649, please. And  
3 could subparagraph (c) of paragraph 24 be exploded?  
4 Mr Borghesi, this is a statement made in one of Mr Pope's  
5 reports. Could you just read that statement to yourself,  
6 please?  
7 A. Okay.  
8  
9 Q. Is that consistent or inconsistent with your  
10 understanding of the position before the 2023 works were  
11 conducted?  
12 A. I would say consistent.  
13  
14 Q. All right. And the 2023 works had the effect of  
15 diverting water away from where - sorry, from entering your  
16 property and in particular getting into the 2022 landslide  
17 area?  
18 A. Correct.  
19  
20 Q. You're of the view that those works were successful in  
21 that aim, if that was one of the aims?  
22 A. I would agree the works were successful in ceasing  
23 what the CivilTest report had confirmed was a pathway for  
24 water to enter our hillside through the cracked kerb on  
25 View Point Road prior to the council doing these works, as  
26 evidenced by the fact our hillside, no seeps over the  
27 ensuing months, continued to dry out. So by inference we  
28 said, yes, successful; it worked for us.  
29  
30 Q. There was a noticeable change in the condition of  
31 the hill in the 2022 landslide area after these works were  
32 completed?  
33 A. Yes, absolutely.  
34  
35 Q. Thank you. Were you fortified in your concern -  
36 I withdraw that. Were you fortified in your view that  
37 water had been leaving the kerbs and travelling into the  
38 ground before the 2023 works were done by reason of  
39 CivilTest's identification of voids?  
40 A. Yes.  
41  
42 Q. Perhaps I'll show you the relevant part of  
43 the CivilTest report and then you can explain to the chair  
44 what you, as a trained engineer, understood the  
45 significance of it to be. RES.0001.0003.0001, at page 13.  
46 This is the CivilTest report to which we were referring,  
47 which is exhibit GB-10 to your witness statement. Now, as

1 part of the works that CivilTest did here they did some  
2 radar - is that the right term? Was it radar?  
3 A. Yes.

4  
5 Q. Yes. And was the intent of that work to identify  
6 whether or not there were voids?  
7 A. Correct.

8  
9 Q. All right. And what, to your mind, would be the  
10 significance of a subterranean void in the context of what  
11 we're discussing here?

12 A. The connection between the major faults in the kerb  
13 prior to the 23 remedial works to the seep area on our  
14 hillside where the 2022 landslide occurred, we felt it was  
15 important to invest in yet another consultant, which was  
16 the radar scanning company, to conduct tests to see if  
17 there were voids of any significance in that area, which  
18 they did through the attached report and, coupled with the  
19 void that was discovered when the trenches were dug for the  
20 2023 road works, we felt was compelling evidence that we  
21 had a connection between the leaky kerb and the area of  
22 the 22 landslide.

23  
24 Q. All right. If we could move forward in that report,  
25 please, to - actually, I'll give another number and see if  
26 it works. MSC.5000.0001.0246. And could we go to 0262,  
27 please. Mr Borghesi, I assume that you're quite familiar  
28 with this report?

29 A. Yes, I am.

30  
31 Q. All right. And you're familiar with the point that is  
32 being made here, which is the identification of part of  
33 the area where ground-penetrating radar was conducted?

34 A. Correct

35  
36 Q. And, positionally in relation to the area of the 2022  
37 landslide, where are these photographs taken? Can you  
38 identify it as you sit there?

39 A. The best way to describe it is directly uphill of  
40 where the 2022 landslide is. So if you look at the top  
41 photograph and the bottom of that fence, the angle that  
42 that's on, if you were to project that line straight down  
43 the hillside sort of heading north over the edge of the  
44 scarp you would directly - within a metre or two -  
45 intercept where the 2022 landslide is. That angle of that  
46 fence is effectively pointing straight towards it.

47

1 Q. I see. And so this was considered by CivilTest  
2 locationally relevant in that it was sufficiently close to  
3 the 2022 landslide area that, if water was getting into  
4 this area, it was likely getting into the 2022 landslide  
5 area; is that fair --  
6 A. That is correct, as evidenced if I may --  
7  
8 Q. Please.  
9 A. -- by the white - there's a broad white arrow in that  
10 upper photograph which I think is the key piece of  
11 information. What this radar scan report says is in that  
12 broad white arrow area there are a number of voids. In  
13 fact they detected a very large void where the red circle  
14 is. And that broad white arrow tracks from the location  
15 precisely where the worst damage in the southern kerb of  
16 View Point Road was prior to the council repair works.  
17  
18 Q. When you say a broad white arrow is that the arrow  
19 that has the notation "water"?  
20 A. Correct.  
21  
22 Q. All right.  
23 A. I'm having trouble reading it with my glasses.  
24  
25 Q. Sorry, you're quite right.  
26 A. Yes, that arrow.  
27  
28 Q. Yes, it's the arrow in the centre.  
29 A. The arrow in the centre, yes.  
30  
31 Q. Thank you. Could we go over the page, please. Now,  
32 on figure 4 at the top there are the void locations  
33 overlaid on a map which also shows the sewer and water  
34 infrastructure; do you see that?  
35 A. Correct. Yes, I do.  
36  
37 Q. And then at the bottom of the page there is the actual  
38 scan of the void?  
39 A. Correct.  
40  
41 Q. Does the scan mean anything to you? It looks like a  
42 QR code gone seriously wrong to me.  
43 A. No, I am unable to interpret that.  
44  
45 Q. Thank you. If we could go over the page, please. The  
46 picture at the bottom is easier to interpret. This is said  
47 to be an image of a void. It's a still of a video that you

1 had taken; is that correct?

2 A. Correct.

3

4 Q. All right. I'll play that video in a moment. But,  
5 just to make sure that we're all clear about this, what's  
6 the significance of the void?

7 A. It validates or agrees with the radar scan information  
8 that is not intrusive. So a radar scan is a radar scan.  
9 This is a physical proof that there are holes or voids in  
10 this area. So we now have two methods or pieces of  
11 evidence that point to the same situation. This is on  
12 council property. So we weren't able to dig holes. But  
13 the presumption is if we dug around this area we would have  
14 uncovered voids consistent with - more voids consistent  
15 with what the radar scans found.

16

17 Q. All right. Could I have on the screen, please, and if  
18 this could be - I don't know if there's sound, but if it  
19 could be muted if there is - RES.0001.0004.0060. I think,  
20 Mr Borghesi, this is the video to which CivilTest are  
21 referring. You made that video?

22 A. Yes, I did.

23

24 Q. It's a little hard to - perhaps if we could just play  
25 it another time. It's a little hard to quite get the scale  
26 right here. How large is that void that we're looking at  
27 there? That could be anything from the sort of size of an  
28 ant to the size of a --

29 A. I would say 200 millimetres, eight inches.

30

31 Q. All right. And what's the work that's going on here?

32 A. This is the excavation for the new stormwater line  
33 down View Point Road that was installed between May and  
34 July 2023. So this is - they've removed the kerb, the  
35 damaged kerb, and they're digging a trench for the pipe.  
36 And in the process of digging the trench for the pipe we  
37 uncovered - I was walking around there one evening,  
38 uncovered void, I said, "Ah-ha, I'm going to take a picture  
39 of this and a video."

40

41 Q. And do you know whether or not the location of that  
42 void is one of the locations that was subject to the  
43 ground-penetration radar scanning?

44 A. Yes, it is in exactly the same area.

45

46 Q. And so, to your mind, when you saw that hole there you  
47 thought that that was proof positive of the data that had

1       been collected by CivilTest?  
2       A.     In the radar scan report.  
3  
4       Q.     Yes.  
5       A.     Correct. Proof positive is accurate.  
6  
7       MR COSTELLO: Thank you. Madam Chair, there's still a bit  
8       to cover with Mr Borghesi. I foreshadowed to him over the  
9       break that he may be required tomorrow, and he will be. If  
10      that's a convenient time, I'm about to move to another  
11      topic.  
12  
13      CHAIRPERSON: How much longer do you think you have?  
14  
15      MR COSTELLO: At least an hour.  
16  
17      CHAIRPERSON: We'll stop now and adjourn until tomorrow.  
18      We do need to start a bit later tomorrow.  
19  
20      MR COSTELLO: When I say at least an hour, I can cut my  
21      cloth overnight and try and make it less.  
22  
23      CHAIRPERSON: Thank you.  
24  
25      MR COSTELLO: But it will certainly be half an hour, and  
26      I suspect it will be a little more than that.  
27  
28      CHAIRPERSON: We need to start at 11.45 tomorrow, which  
29      may mean we get through both witnesses tomorrow. But, if  
30      not, we can --  
31  
32      MR COSTELLO: If it is convenient to you, Madam Chair,  
33      I might speak with Ms Siemensma as well about the position  
34      of her witness. Her witness is obviously somebody with a  
35      significant role, and I'm conscious that we're causing  
36      disruption. So perhaps I'll have those conversations after  
37      court and we can then report them back to you.  
38  
39      CHAIRPERSON: That would be good. Thank you. We'll  
40      adjourn now.  
41  
42      <THE WITNESS WITHDREW  
43  
44      **AT 4.15 PM THE HEARING ADJOURNED UNTIL THURSDAY, 15 MAY**  
45      **2025**  
46  
47

#	456:22, 492:4 <b>12-metre</b> <sup>[1]</sup> - 507:12 <b>1222</b> <sup>[1]</sup> - 493:9 <b>13</b> <sup>[3]</sup> - 412:16, 508:17, 514:45 <b>13th</b> <sup>[1]</sup> - 458:21 <b>14</b> <sup>[23]</sup> - 401:24, 404:33, 409:37, 409:38, 411:10, 411:29, 411:39, 412:11, 412:16, 412:31, 419:25, 420:18, 436:37, 439:33, 442:3, 444:1, 471:43, 481:45, 502:19, 503:29, 505:6, 509:4, 513:34 <b>14-16</b> <sup>[3]</sup> - 482:33, 511:25, 511:27 <b>14th</b> <sup>[2]</sup> - 449:3, 459:39 <b>15</b> <sup>[10]</sup> - 412:32, 413:6, 414:25, 415:4, 417:23, 431:35, 436:19, 445:6, 496:18, 518:44 <b>15.52</b> <sup>[1]</sup> - 435:26 <b>150</b> <sup>[4]</sup> - 414:19, 425:42, 427:9, 450:22 <b>150mm</b> <sup>[5]</sup> - 425:34, 425:46, 426:7, 426:31, 426:42 <b>16</b> <sup>[1]</sup> - 405:45 <b>16.79</b> <sup>[2]</sup> - 433:12, 433:16 <b>17</b> <sup>[2]</sup> - 460:33, 461:34 <b>18/2/21</b> <sup>[1]</sup> - 427:6 <b>1963</b> <sup>[1]</sup> - 425:42	483:25, 483:41, 484:45, 496:30 <b>2015</b> <sup>[8]</sup> - 480:2, 495:17, 495:19, 495:23, 495:27, 496:7, 496:18, 510:9 <b>2017</b> <sup>[3]</sup> - 495:5, 495:7, 495:15 <b>2017-2018</b> <sup>[1]</sup> - 510:12 <b>2018</b> <sup>[6]</sup> - 480:3, 489:18, 495:17, 495:19, 496:22 <b>2019</b> <sup>[1]</sup> - 443:43 <b>2020</b> <sup>[10]</sup> - 479:13, 479:19, 479:28, 480:25, 483:25, 484:45, 485:14, 485:18, 497:5, 510:10 <b>2021</b> <sup>[2]</sup> - 491:2, 493:17 <b>2022</b> <sup>[47]</sup> - 405:43, 426:29, 443:46, 444:1, 457:41, 478:23, 480:37, 481:2, 481:13, 481:20, 482:5, 482:13, 482:18, 482:26, 485:19, 486:3, 486:4, 486:9, 489:17, 489:20, 489:27, 490:26, 493:15, 493:33, 493:34, 497:42, 498:28, 505:31, 505:47, 506:3, 506:19, 507:18, 507:35, 507:38, 508:38, 513:12, 513:17, 514:16, 514:31, 515:14, 515:36, 515:40, 515:45, 516:3, 516:4 <b>2023</b> <sup>[17]</sup> - 443:43, 457:9, 457:12, 463:2, 463:22, 464:34, 465:38, 466:13, 466:37, 512:6, 513:21, 514:10, 514:14, 514:38, 515:20, 517:34 <b>2024</b> <sup>[4]</sup> - 417:43, 469:12, 469:33, 490:47 <b>2025</b> <sup>[18]</sup> - 401:24, 457:44, 469:32, 470:40, 474:18, 474:22, 478:28, 480:38, 481:23,	481:26, 481:45, 483:13, 490:30, 490:34, 491:33, 493:37, 513:16, 518:45 <b>21</b> <sup>[3]</sup> - 427:26, 429:1, 452:7 <b>22</b> <sup>[15]</sup> - 418:23, 434:23, 465:14, 478:25, 481:41, 490:27, 490:28, 492:46, 498:35, 498:37, 498:38, 505:29, 506:45, 508:25, 515:22 <b>23</b> <sup>[4]</sup> - 423:39, 468:4, 513:33, 515:13 <b>24</b> <sup>[10]</sup> - 404:41, 433:34, 434:1, 434:8, 434:31, 468:5, 468:7, 503:33, 514:3 <b>25</b> <sup>[10]</sup> - 430:47, 465:16, 481:28, 481:43, 490:7, 490:8, 490:22, 492:44, 498:13, 505:29 <b>250</b> <sup>[1]</sup> - 401:18 <b>25mm</b> <sup>[5]</sup> - 432:1, 432:9, 433:11, 433:25, 434:18 <b>26</b> <sup>[1]</sup> - 432:43 <b>27</b> <sup>[2]</sup> - 431:24, 432:45 <b>28</b> <sup>[1]</sup> - 412:25 <b>29</b> <sup>[1]</sup> - 509:15 <b>29(d)</b> <sup>[1]</sup> - 497:7 <b>29(e)</b> <sup>[1]</sup> - 497:37 <b>29(f)</b> <sup>[1]</sup> - 498:26	<b>300-odd</b> <sup>[1]</sup> - 410:29 <b>31</b> <sup>[3]</sup> - 419:13, 434:1, 434:13 <b>33</b> <sup>[1]</sup> - 436:6 <b>34</b> <sup>[1]</sup> - 434:38 <b>35</b> <sup>[1]</sup> - 481:42 <b>38</b> <sup>[2]</sup> - 433:47, 434:19
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