

Board of Inquiry into the McCrae landslide

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

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

Monday, 12 May 2025 at 10.00am

(Day 4)

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

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

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

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

1 CHAIRPERSON: Good morning, Mr Costello.

2

3 MR COSTELLO: Good morning, Madam Chair. Madam Chair,
4 there's four witnesses today, all on the lay as opposed to
5 expert side. The first is Kellie Anne Moran, who I now
6 call.

7

8 <KELLIE ANNE MORAN, affirmed:

9

10 <EXAMINED BY MR COSTELLO:

11

12 CHAIRPERSON: Ms Moran, Mr Costello, is one of the counsel
13 assisting this inquiry. He's going to ask you some
14 questions and then others may have some questions for you
15 after he's finished.

16 A. Thank you.

17

18 MR COSTELLO: Your full name is Kellie Anne Moran, and
19 Kellie is spelt K-e-l-l-i-e?

20 A. That's correct.

21

22 Q. Thank you. And your address is known to the
23 commission. You've provided your address to us?

24 A. Yes, we have.

25

26 Q. Thank you. And what's your current occupation?

27 A. I run a small private tutoring business.

28

29 Q. Thank you. Now, you've been served with a notice to
30 attend and give evidence today?

31 A. Yes, I have.

32

33 Q. And you're attending in answer to that notice?

34 A. Yes, I am.

35

36 Q. Thank you. You have produced a witness statement to
37 this board of inquiry; is that correct?

38 A. Yes.

39

40 Q. All right. Do you have a copy of that with you?

41 A. Yes, I do.

42

43 Q. All right. Was that provided to you by the solicitors
44 assisting or did you bring your own?

45 A. That was provided to me.

46

47 Q. All right. Do you have a pen there? There's one just

1 near the microphone stand.

2 A. Thank you.

3

4 Q. Are the statements made in that witness statement true
5 and correct?

6 A. Yes, they are.

7

8 Q. All right. Would you mind signing the final page of
9 that witness statement for me. Thank you very much.

10 I tender that statement, Madam Chair.

11

12 CHAIRPERSON: The statement of Kellie Moran will be
13 exhibit CA15.

14

15 **EXHIBIT #CA15 STATEMENT OF KELLIE MORAN AND ATTACHED**
16 **DOCUMENTS.**

17

18 MR COSTELLO: Now, Ms Moran, you're one of the registered
19 owners of the property of 3 Penny Lane, McCrae?

20 A. Yes.

21

22 Q. And you jointly own that property with your husband?

23 A. Yes.

24

25 Q. His name is Nick?

26 A. Yes.

27

28 Q. All right. Now, when did you first become aware of
29 the property at 3 Penny Lane, as best as you can recall?

30 A. Possibly January maybe 2023, January/February.

31

32 Q. All right. And you were in the market for a holiday
33 home?

34 A. Yeah.

35

36 Q. Do you recall when you first went to the property?

37 A. I think it was in about March of 2023.

38

39 Q. That was for the purpose of inspecting it?

40 A. Correct.

41

42 Q. Okay. And who did you go with?

43 A. With Nick and Grant McConnell, I believe his name was,
44 from Belle Property.

45

46 Q. He was the agent, was he?

47 A. Correct.

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Q. And he showed you through the whole of the property?
A. Yes, he did.

Q. And while you were inspecting the property did you notice anything unusual about the property?
A. I noticed there was some temporary fencing outside what I now know is part of Penny Lane but it was running parallel to Penny Lane from the corner of the property.

Q. And did you make any enquiries about the temporary fencing?
A. Yes, I did.

Q. All right. And who did you enquire with?
A. Mr McConnell.

Q. And what were you told?
A. That the property owners were doing some work, or words to that effect.

Q. Did you form any view about whether or not you were interested in acquiring the property at that first inspection?
A. Yeah, we loved the property, but we were concerned about that temporary fencing.

Q. All right. Did you make any further enquiries or do any further research about the area and the possible cause of the temporary fencing?
A. Yeah, we - as soon as I got in the car after we left I did do a search on the area and found that there had been a landslide there a few months earlier, the 2022 landslide, effectively.

Q. All right. And when you say you did a search do you mean on the internet?
A. Yes.

Q. Okay. And did you pass that information onto Nick?
A. Yes, I did.

Q. All right. And what did Nick say?
A. We decided that we needed to do a little bit more investigating, I suppose, into, yeah, that information, that we had to perhaps ask some more questions of the agents and, yeah, that's what we did.

1
2 Q. And did you ask more questions of the agent?
3 A. Nick did.
4
5 Q. Nick did. And he told you what the agent had told
6 him?
7 A. Yes.
8
9 Q. All right. And what's the best of your recollection
10 as to what Nick told you?
11 A. That the agent enquired through the current - at the
12 time the current owners and had received an email saying
13 that there had been a landslide there but that 3 Penny Lane
14 had not been affected, that the landslide had happened as a
15 result of rainfall and pipes bursting, and that - in the
16 email that they sent us there was forwarded an email that
17 they had received from the council member, I think it was a
18 building surveyor or someone at the time, who had written
19 an email giving them information about that the
20 rectification works had begun and that the drain work was
21 all fixed and that they were just waiting on materials to
22 do the rest of the work).
23
24 Q. I see. The real estate agent passed along the email
25 from the current owner to Nick?
26 A. Yes.
27
28 Q. And did Nick show you that email?
29 A. Yes.
30
31 Q. All right. Thank you. And so, having read those
32 emails, were you then satisfied that you sufficiently
33 understood the cause of the 2022 landslide?
34 A. Yes.
35
36 Q. Do you recall if you or Nick arranged for searches to
37 be done of the property before you bought it?
38 A. Yes, Nick did some Landchecker searches through - I'm
39 not sure what service it is but, yeah, we paid for a
40 report.
41
42 Q. I see. And did those searches reveal anything in
43 connection with landslide risk?
44 A. No.
45
46 Q. You and Nick decided to buy the property?
47 A. Yes, we did.

1
2 Q. All right. And do you remember roughly when you
3 settled on the property?
4 A. It was May of 2023.
5
6 Q. May of 2023. And once you had acquired the property
7 did you need to do any work to it?
8 A. No.
9
10 Q. All right. You said May of 2023. How soon after you
11 settled on the property did you start using it?
12 A. Straightaway.
13
14 Q. All right. And was it used very often?
15 A. Yes. Most weekends there was someone down there,
16 either one of our kids and their friends or family or other
17 friends or Nick and I were there a lot. I work in
18 education. So every school holidays there was one or all
19 of us there.
20
21 Q. How many children do you have?
22 A. Three.
23
24 Q. And what are their ages?
25 A. My eldest is 22, my middle one has just turned 20 and
26 my youngest is 17.
27
28 Q. All right. And so would it be fair to describe the
29 house as heavily occupied during the school holidays?
30 A. Yes.
31
32 Q. Often occupied at weekends?
33 A. Yes.
34
35 Q. And what about during the week? Was it always vacant?
36 A. No. Nick works from home, so often he would travel
37 down there and work from there if he needed a bit of space.
38
39 Q. All right. Now, what about in the lead-up to
40 5 January, when the first landslide occurred, was the
41 property often occupied then?
42 A. Yes.
43
44 Q. Did you come to know any of your neighbours?
45 A. Yes, we did.
46
47 Q. All right. Did you come to meet Mr Jon McLean?

1 A. Yes.
2
3 Q. And he's a neighbour of an adjacent property?
4 A. Yeah, he's from the property at 2 Penny Lane.
5
6 Q. All right. And how did you meet Mr McLean?
7 A. We just met him out in the street one day.
8
9 Q. And what did you learn about Mr McLean's situation
10 when you met him?
11 A. Yeah, that was when we found out that him and his
12 family and the Willigenburgs were still not in their homes
13 from the 2022 landslides.
14
15 Q. All right. That was news to you at the time?
16 A. Yes, that was the first we had heard of that.
17
18 Q. Did you understand that there were residents nearby to
19 your property that had been unable to return to their
20 homes?
21 A. No, we didn't know that.
22
23 Q. Were you aware that any evacuation orders had been
24 made?
25 A. No.
26
27 Q. I see. Madam Chair, can you hear Ms Moran?
28
29 CHAIRPERSON: Just.
30
31 WITNESS: Sorry.
32
33 MR COSTELLO: No, no, no, that's all right. It's an
34 unusual arrangement where I'm asking you questions but the
35 most important person to answer to is up there.
36
37 WITNESS: Sorry. So I should answer you?
38
39 CHAIRPERSON: No, you can look at Mr Costello if you feel
40 more comfortable doing that, or you can look at me. If you
41 can just keep your voice up a little bit.
42
43 WITNESS: Okay. Sorry.
44
45 MR COSTELLO: No, no, no, not at all. So who had been
46 staying at the property say up to 4 January?
47 A. My entire family, and some extended family had come to

1 visit and stay. Friends, friends of the kids had been with
2 us. Yes, so there was a number of people coming and going.
3
4 Q. On 4 January you and Nick and the three kids were all
5 there?
6 A. Yes.
7
8 Q. And was there anyone else there at 4 January or had
9 everyone else left by then?
10 A. On the 4th everyone had left, but we had visitors
11 again on the 5th.
12
13 Q. I see. Now, on the 5th you went out for dinner?
14 A. Yes.
15
16 Q. And then some of the family returned home to Melbourne
17 and others stayed in McCrae; is that right?
18 A. Yes.
19
20 Q. All right.
21 A. My husband, my daughter and my son all returned home,
22 back to Melbourne.
23
24 Q. And who went back to the McCrae property?
25 A. My other daughter and I.
26
27 Q. Okay. And did Nick and two of the children, did they
28 leave immediately from dinner?
29 A. Yes.
30
31 Q. I see. So you returned home to the property with your
32 daughter?
33 A. Yes.
34
35 Q. Is that your eldest daughter?
36 A. Yes.
37
38 Q. All right. And what time do you think you arrived
39 back at the property?
40 A. I think we got back at about 7.30.
41
42 Q. Okay. And what happened when you returned to the
43 property?
44 A. I went out onto the deck, which is where I spent a lot
45 of my time, and my daughter went to get her belongings from
46 the third level, because she's been staying there while we
47 had visitors and wanted to move back into the - you know,

1 the bedroom that they all wanted to fight over.

2

3 Q. All right. Why don't we at this point talk about
4 the property a little bit before we talk about what
5 happened?

6 A. Yes.

7

8 Q. So you've just described a third level and a second
9 level. Can you just give a general description of the
10 property and the levels of the property?

11 A. Yeah, sure. So there's a ground level. To enter the
12 ground level you probably do have to go up some stairs.
13 Then there's - the ground level has a master bedroom and a
14 smaller bedroom. And then on the second level, which was
15 the first floor, had two other bedrooms, a bathroom, the
16 laundry, living area and kitchen. And then the third level
17 is - was just like another lounge room.

18

19 Q. And so the second - the house is on a slope?

20 A. Yes.

21

22 Q. And is it the second level that is level with the
23 backyard of the house, if you can call it that?

24 A. Yes.

25

26 Q. Right. So you could exit from the second level and be
27 out the back?

28 A. That's correct.

29

30 Q. I see. And you said that when you got home you went
31 to the deck?

32 A. On the second - well, first floor.

33

34 Q. On the first floor?

35 A. Yes.

36

37 Q. And your daughter went to the third floor; is that
38 right?

39 A. Yes.

40

41 Q. Because she wanted to move her belongings into a
42 bedroom on the second floor?

43 A. Correct.

44

45 Q. Which is the better bedroom?

46 A. Yes.

47

1 Q. I see. And because everyone else had left it was now
2 available?
3 A. Yes.
4
5 Q. I see. So you're then on the deck. Your daughter's
6 moving her things. And then what did your daughter do
7 then?
8 A. Her hands were full and she was walking through a
9 small hallway to get to the bedroom.
10
11 Q. And then what happened?
12 A. She heard noise, and I heard the same noise, and
13 I sort of looked around thinking, "Oh, there's going to be
14 a storm," and went to grab some towels that were hanging,
15 and that was when I heard her call out to me.
16
17 Q. What was the noise that you had heard?
18 A. It was like a rumbling, I suppose.
19
20 Q. And your daughter called out to you?
21 A. Yeah. She called out, and at that stage she had
22 moved - she was in front of the laundry, and the laundry
23 door was closed, and when she heard the noise she knew it
24 was coming from out there, so she'd moved back - sorry - to
25 the window, and that was when she could actually see - the
26 window in the living room - she could see the land coming
27 down. That was when she called out to me.
28
29 Q. So she called out to you, and you had both heard a
30 noise, and then what happened after that?
31 A. I was walking back into the house, and that - yeah, we
32 heard the - then there was a lot of banging, like bang and
33 rumbling and the house was moving, you could feel it.
34
35 Q. And so there's a loud noise. There's rumbling and
36 moving. And you're now in the house with your daughter?
37 A. Yes.
38
39 Q. All right. And what happens once you're in the house?
40 A. That was when we noticed - I saw greenery, like a
41 tree, I suppose, outside the living room window, and the
42 laundry had sort of been pushed across the hallway. The
43 laundry door - cupboards in the laundry had come through
44 the wall and we couldn't get access to that end of the
45 house anymore.
46
47 Q. Did you feel an impact with the house when this

1 happened?
2 A. Yes, yeah.
3
4 Q. And so part of the - the laundry sat at the back of
5 the second level out towards the back of the house; is that
6 right?
7 A. Yeah, both the laundry and the bathroom sort of almost
8 jutted out a little bit.
9
10 Q. I see.
11 A. The rest of the house was quite level along that line,
12 but those two stuck out a little bit.
13
14 Q. And the laundry had actually been pushed in towards
15 the living area, had it?
16 A. Across the hall.
17
18 Q. Across the hall. Did the noise and vibration stop
19 then?
20 A. Yeah. I couldn't tell you how long it went for.
21 Yeah, I just - I don't know what that time was.
22
23 Q. How far was your daughter away from where the parts of
24 the laundry and the cupboards came through?
25 A. Initially she was there. It was just - sorry, it's
26 just lucky that she walked back.
27
28 Q. I see. If she'd stayed where she was she would have
29 been in trouble?
30 A. Yes. The laundry door was pushed across the hallway
31 and had actually protruded into that bedroom that was
32 opposite it. So that's where she was standing.
33
34 Q. That would have been quite shocking for you?
35 A. Yes.
36
37 Q. And for her?
38 A. M'hmm.
39
40 Q. So what did you do once the rumbling and the noise had
41 stopped?
42 A. So we could see some water had come - was coming
43 through the laundry and even a bit of dirt. So we just
44 left the property, walked down the - luckily the stair - we
45 still had access to the stairs there, so we walked down the
46 stairs and I called triple 0.
47

1 Q. All right. So you called triple 0 from where? The
2 front of the property?

3 A. Yes.

4

5 Q. Okay. Just give me one moment, Ms Moran. Just to
6 help you with the description you've just given of what had
7 happened inside, can I just call up a document, please.
8 I think the start of the document is RES.0009.0001.0001,
9 and I want 0004. It might be separate. Sorry, I'll give
10 you another one. It's RES.0009.0001.0004. This is a
11 picture referred to in your witness statement. It's marked
12 as exhibit KM-2 in that statement. Could you just describe
13 to the chair what it is we're seeing here?

14 A. So that photo is taken from the living room. To the
15 right of where that photo is is the doors that give you
16 access to the outside, and so, yeah, that's what we could
17 see after the immediate - after the landslide, yeah.

18

19 CHAIRPERSON: Is that door, Ms Moran, the laundry door?

20 A. Yes.

21

22 MR COSTELLO: We'll come back to this here, but it looks
23 as though in that picture there's water on the floor?

24 A. Yes. So I think this picture was taken maybe half an
25 hour after the landslide.

26

27 Q. I see.

28 A. So there wasn't that much water when we were there,
29 but we could see some water.

30

31 Q. Thank you. And did you take this picture?

32 A. I think Nick did.

33

34 Q. Okay. Thanks. So you said that you went outside and
35 you called triple 0?

36 A. Yes.

37

38 Q. And what did they say to you?

39 A. They actually - they asked what service, and
40 I actually said I don't know. They wanted to know what had
41 happened, and I told them, "I think there's been a
42 landslide at our property."

43

44 Q. Did they put you through to another service?

45 A. They put me through to SES. They asked - obviously
46 wanted to make sure that there was no-one trapped or
47 injured, which there wasn't, so they put me through to SES.

1
2 Q. All right. And you spoke then to someone at the SES?
3 A. Yes.
4
5 Q. And what did they say?
6 A. Again, I said, "I think there's been a landslide."
7 They said, "Has a retaining wall come down," and I said,
8 "No, I think it's a bit more than that." We had looked out
9 the window, so we could see the dirt that was impacting to
10 the back of the house. So they said they would have
11 someone come out.
12
13 Q. Speaking of retaining walls, did you have a retaining
14 wall in the rear of your property?
15 A. Yes, we did.
16
17 Q. Okay. Could you tell at this point in time whether or
18 not it was still there, or had you not had a sufficient
19 view of the back?
20 A. No, I couldn't tell.
21
22 Q. Thank you. While you were waiting for the SES to
23 arrive what did you and your daughter do?
24 A. We walked to the front of the property and just
25 waited, and then we walked back up the stairs - there's
26 some side stairs around the side of the property that took
27 you to the backdoor, and we walked up those stairs just so
28 that we could get a better idea of what had happened.
29
30 Q. And did it give you a better idea?
31 A. Yes, it was very clear that land and vegetation had
32 hit our property.
33
34 Q. And as you were making this inspection did you notice
35 any water?
36 A. Yes. That was when we could - looking in the window
37 we could - we could see that there was water like you can
38 see in that photo.
39
40 Q. Inside the house?
41 A. Yes.
42
43 Q. And did you notice any water flowing outside of
44 the house?
45 A. I didn't.
46
47 Q. Okay. Did the water give you some concern?

1 A. Yes. It was a substantial amount of water. So we
2 walked back down the stairs. There was a little shed sort
3 of there, and I thought maybe the mains power was there in
4 that area, so I tried to get in there to turn the power
5 off. That was my concern. But it wasn't there. So
6 I called triple 0 again.
7
8 Q. Right. And what did you say to them?
9 A. And said, "There's a lot of water coming into our
10 property and it's concerning. Yeah, we probably need some
11 help a little bit more urgently."
12
13 Q. Did they put you back through to the SES?
14 A. Yes.
15
16 Q. Okay.
17 A. Yes.
18
19 Q. And did you explain the same thing to the SES?
20 A. Yes.
21
22 Q. What did they say?
23 A. They said that they were going to get someone there as
24 soon as they could.
25
26 Q. By this point - at this point, rather, you hadn't yet
27 spoken with Nick?
28 A. No.
29
30 Q. All right. When did you first speak with Nick?
31 A. After - shortly after that phone call.
32
33 Q. Okay. And what did you say to him?
34 A. I can't remember. I think I said, "You need to come
35 back," basically. I'm not sure, but obviously told him
36 that there had possibly been a landslide. It just felt
37 unbelievable saying those words, but, yeah, just that, "Can
38 you come back?"
39
40 Q. Because he was on his way to Melbourne at this point?
41 A. Yes.
42
43 Q. All right. Do you recall how long it was in general
44 terms before the SES arrived?
45 A. Initially a man arrived, and I think it may - maybe
46 about 20 minutes after, maybe less, 15, 20 minutes, and he
47 said that he was local. So that's why he got there really

1 quickly.

2

3 Q. And what did you say to him?

4 A. I told him I was - what we had seen and what had
5 happened, and that I was concerned about the power being on
6 with all the water in the house.

7

8 Q. What did he do?

9 A. He immediately went up the stairs and into the house,
10 I assume, and turned the mains power off, which he told me
11 the power board was located in the pantry in the kitchen of
12 the house.

13

14 Q. Okay. So at this point there's water in the property
15 but the power's off, there's a single SES person on site
16 with you and your daughter?

17 A. Yes, yes.

18

19 Q. And then did other SES responders arrive?

20 A. Yeah, shortly after a lot started to arrive.

21

22 Q. And what did they tell you that they were going to do
23 when they arrived?

24 A. So a man by the name of Mark Daw approached me and
25 said that he was in charge and that he was going to contact
26 Water, South East Water, to have the water turned off,
27 because he had been told of the water that was coming
28 through. By this stage water was running down the stairs
29 of the house into - and then out the front door sort of
30 thing. The stairs lined up with the front door. So there
31 was a lot of water by this stage. And he also said he was
32 going up to the properties up above to see if they could
33 get a better look of what was going on, because you
34 couldn't really see it from our property.

35

36 Q. I see.

37 A. The head scarp, sorry, you couldn't see where it
38 started from our property. It was kind of around a bend a
39 little bit.

40

41 Q. Right. And when Mr Daw arrived did he arrive with
42 other people?

43 A. Yes.

44

45 Q. So by this point in time there's quite a number of
46 people at the house; is that right?

47 A. Yes.

1
2 Q. Okay. And while Mr Daw was making his investigations
3 what were the other SES people doing?
4 A. There was people everywhere. They were - a lot - they
5 were going up to the house. There was people talking to
6 us. They were amazing. But for the most part they were
7 heading up into the house, and we were - we were out on
8 Penny Lane.
9
10 Q. Were you concerned about the contents of the house,
11 given the water?
12 A. Yes. So they did tell us that they had moved - they
13 were going to move some things. They were moving furniture
14 so it wouldn't get damaged, which was really lovely.
15
16 Q. Do you recall roughly when Nick arrived back at the
17 property?
18 A. I think some time after 8.
19
20 Q. Okay.
21 A. Shortly after 8.
22
23 Q. Now, in your witness statement you mention the fact
24 that you had some awareness of the fact that there had been
25 construction works going on around the property?
26 A. Yeah, we'd heard construction noises since we - yeah,
27 different times while we've been there.
28
29 Q. Did you have any understanding of what they were?
30 A. No.
31
32 Q. Okay. Were you allowed into the property at any point
33 on the night of the 5th?
34 A. Yes. SES took us through the property. There was
35 still an obscene amount of water running through it, but
36 they had - we'd helped them with some sandbags to divert
37 some of that water so that we could get in to get some
38 personal items.
39
40 Q. I see. And just explain the water that you were
41 seeing here. So you had been - had you been told that the
42 water had been turned off?
43 A. Yes.
44
45 Q. By South East Water?
46 A. Yes.
47

1 Q. All right. And so did you have any understanding of
2 where this water was coming from then?
3 A. No. I thought maybe - you know, there was the
4 laundry. I thought it had something to do maybe with
5 the pipes in the laundry. That was sort of what - the
6 extent of my knowledge of water.
7
8 Q. Was the water everywhere or was it sort of flowing in
9 distinct areas?
10 A. It was flowing down the stairs. It was flowing - and
11 the laundry is maybe a metre off the stairs, the laundry
12 door. So it was flowing in a straight line kind of down
13 the stairs and out the property.
14
15 Q. When you say "down the stairs", these are the stairs
16 that are pictured in this photograph here?
17 A. Yes.
18
19 Q. So the water was flowing straight down those stairs
20 and at the bottom of those stairs is the front door to the
21 property, is it?
22 A. (Witness nods.)
23
24 Q. And the water was coming out?
25 A. (Witness nods.)
26
27 Q. And did you say that the SES had put sandbags in some
28 locations inside the house?
29 A. I don't know where they put them. I know that they -
30 we just helped them fill them up downstairs and they were
31 going to use sandbags to - oh, actually, no, maybe they put
32 them to stop it from going to the rooms either side of the
33 stairs.
34
35 Q. I see.
36 A. Yeah, I think that's where they put them.
37
38 Q. Now, on the evening of the 5th were you told that you
39 needed to evacuate the property?
40 A. No.
41
42 Q. Do you recall whether at any point you were given an
43 evacuation notice?
44 A. No, we were not.
45
46 Q. What time did you leave the property, do you think, on
47 the 5th?

1 A. I left with the two - my two daughters at about 9.30.
2
3 Q. To head back to Melbourne?
4 A. Correct.
5
6 Q. Okay. Did you come back to McCrae the next day?
7 A. Yes.
8
9 Q. And did you come alone?
10 A. No, I was with my two daughters again.
11
12 Q. Okay. When you and your two daughters left on the
13 night of the 5th had Nick stayed on?
14 A. Yes, he had.
15
16 Q. Did he eventually return to Melbourne or did he stay
17 at the property that night?
18 A. He returned to Melbourne much later that night.
19
20 Q. Thank you. So you travelled again to the property the
21 next day, on the 6th, with your two daughters?
22 A. Yes.
23
24 Q. Do you recall roughly when that was?
25 A. I think we got there around 2 o'clock.
26
27 Q. Okay. And did Nick also go?
28 A. Yeah. He had left earlier in the day.
29
30 Q. Okay. Now, did you inspect the property on that day?
31 A. Yes, we went back into the house.
32
33 Q. And what did you notice about water? Was it still
34 flowing through the house?
35 A. Yeah. They had told us that they had diverted the
36 water so that it wasn't coming through the house anymore.
37 It was actually going around and underneath the house, so
38 it was diverted, and you could see, and I think Nick took
39 some video, when we were in our bathroom that was on the
40 ground level, that was where the water was coming around
41 under there.
42
43 Q. When you say "they told us" who do you mean?
44 A. SES.
45
46 Q. Thank you. Do you remember speaking with Mark Daw on
47 6 January when you returned to the house?

1 A. He was still there, yes.
2
3 Q. And he introduced you to somebody from the council, a
4 Mr Glover?
5 A. Yes.
6
7 Q. Do you recall that? And what were you told by Mr Daw
8 about the position of the SES and the council?
9 A. That the SES had - were signing the job over to
10 council, I think that's the language that they used.
11
12 Q. I see. And was Mr Glover to be your contact at the
13 council?
14 A. That was the - yeah.
15
16 Q. I see. Do you recall if anybody else from the council
17 was there on that day?
18 A. I think Dane Pope arrived during the time I was there.
19
20 Q. All right. Were you introduced to Mr Pope?
21 A. Not introduced other than told, "That's Dane Pope."
22
23 Q. I see.
24 A. Yeah, I never spoke with him.
25
26 Q. I see. Thank you. Were you told what Mr Pope's role
27 was?
28 A. Yes, I was.
29
30 Q. All right. And what were you told?
31 A. That he was a geotech.
32
33 Q. Okay. Now, what about neighbours? Did you speak to
34 any neighbours on the 6th?
35 A. Yes. Paul Willigenburg, who was renting the property
36 in front of ours, came to check on our wellbeing.
37
38 Q. Did he tell you that he had noticed anything in
39 particular?
40 A. Yeah. He told us that he had made a - had contacted
41 council. There were some drains that ran along
42 Point Nepean Road that crossed - went underneath Penny Lane
43 and that he had noticed a lot of water in those drains, and
44 he had made this call on 16 December to let them know
45 because that was unusual to have that water, that there
46 hadn't been water in those drains since they had done
47 rectification works from the 2022 slide, or done drain work

1 along View Point Road, and all of a sudden this water was
2 running under there. And there had been no rain. So that
3 concerned him.
4
5 Q. What was the reason you attended at the property on
6 6 January?
7 A. We had to pick up my daughter's car. She had left her
8 car there.
9
10 Q. All right. And she then returned to Melbourne?
11 A. Yes.
12
13 Q. You went back to the property a couple of days later;
14 is that right?
15 A. Yes.
16
17 Q. 6 January was a Monday. Do you recall when you next
18 went back?
19 A. I think it was the Tuesday.
20
21 Q. All right. In any event, within a day or two?
22 A. Yes.
23
24 Q. When you went back the next time - in your witness
25 statement you say the 8th, so that would make it the
26 Wednesday?
27 A. Oh, okay, yes, sorry.
28
29 Q. Does that sound right?
30 A. Yes, it does.
31
32 Q. Did you go alone or did you go with others?
33 A. With Nick.
34
35 Q. And did the kids come?
36 A. Oh, on the 8th? Yes. Hang on, I'm getting my days
37 mixed up.
38
39 Q. That's all right.
40 A. Yes, yes, I think they did, yes.
41
42 Q. Okay. And what was the purpose of the visit to the
43 property at this point in time?
44 A. We were concerned about the water, obviously, and so
45 we went to remove as much soft furnishing as we could. We
46 were worried about mold and water.
47

1 Q. And you said you hadn't been served with an evacuation
2 notice?
3 A. No.
4
5 Q. If you wanted to, was it feasible to stay at the
6 property at this point in time?
7 A. No.
8
9 Q. Is that because of the water?
10 A. Yes.
11
12 Q. And the general damage?
13 A. Yes, and there was no power on at the property.
14
15 Q. I see. Okay. Was it at about this point in time that
16 you started observing posts on the McCrae Community
17 Facebook page?
18 A. Yes, I did do some - yeah, just sort of joined some
19 local pages and, yeah, had noticed a post about a problem
20 in Charlesworth Street that had been posted earlier in
21 December.
22
23 Q. How close is Charlesworth Street to Penny Lane?
24 A. Sort of my understanding is that View Point Road is a
25 block behind us, and then Charlesworth is another block
26 above them.
27
28 Q. Okay.
29 A. I think.
30
31 Q. Thank you. Before we get to the nature of the post,
32 had you been a member of the McCrae Community Facebook page
33 before now?
34 A. No, I hadn't.
35
36 Q. This was something you discovered?
37 A. Yes.
38
39 Q. I see. And so you started looking at those posts, and
40 did you say that you noticed one about Charlesworth Street?
41 A. Yes.
42
43 Q. All right. And what was the nature of the post about
44 Charlesworth Street?
45 A. There was concerns about the road, that had softened
46 and water was coming up from the road, and that it had been
47 sectioned off with witches hats to make it safe, and the

1 members of the community were stating that, you know, you
2 had to drive up, like, people's nature strips basically to
3 get around this huge hole.
4
5 Q. Did you show that to Nick?
6 A. Yes, I did.
7
8 Q. Do you remember on Wednesday, the 8th, when you
9 attended the property with Nick and the kids, about what
10 time you got there?
11 A. No, I don't. In the morning.
12
13 Q. Do you remember if it was morning or afternoon?
14 A. Yes, it was in the morning, yeah.
15
16 Q. Okay. And about what time do you think you left?
17 A. We left around 1 o'clock.
18
19 Q. Okay. You left about 1 o'clock. Was that to go and
20 have some lunch?
21 A. Yes.
22
23 Q. Did you come back to the property after that
24 A. Yeah, I did. I had left my phone there.
25
26 Q. I see. And when you arrived at the property did you
27 speak to a neighbour?
28 A. I spoke to Jon McLean's son. So the property owner of
29 2 Penny Lane, his son was in there. He was parking his
30 car. They were going to the beach.
31
32 Q. Right. And what was your conversation with him, so
33 far as you can recall it?
34 A. We were just talking about - he was just enquiring as
35 to our - as to what had happened. Obviously he could see
36 the - we'd spoken - I think Nick had spoken to Jon when it
37 happened. So he knew, and he was just checking on us.
38
39 Q. Is it right that at this point in time there's no
40 temporary fencing or anything like that around the
41 property?
42 A. There's no temporary fencing.
43
44 Q. All right. And what was the situation with water on
45 Wednesday, the 3rd? Was there still water flowing
46 underneath the property?
47 A. Yes, and so it was coming - so the front of

1 the property has another big retaining wall and a grass
2 area that's sort of at the level of Penny Lane. And so the
3 water was coming down that - onto that retaining wall at
4 that time and then running down Penny Lane and into the
5 drain at the bottom of Penny Lane. So it was very clear
6 that there was a lot of water coming down. It was running
7 down the road.

8
9 Q. Did you have any other neighbours attend at the
10 property on that day so far as you can recall?

11 A. There was a man - yes, there was a man who - I didn't
12 know him, but he had - when I was speaking to Jon, who is
13 Jon's son, he had walked up Penny Lane and then diverted
14 straight to our gate, which is on the other side of
15 the garage. It's so hard to explain. But he was going
16 to - it looked like he was heading into our property from
17 this - the front lawn of our property from this gate.

18
19 Q. Did you speak with him?

20 A. I asked him if I could help him, if he needed any
21 help, and he said he just wanted to have a look, and
22 I said, "Oh" - that I was the property owner and did he
23 need anything, and he said, "I heard you've got a problem
24 with water," and we had a general conversation about that.

25
26 Q. Okay. You say in your witness statement that later
27 that day you and Nick made the decision to have some
28 cameras installed?

29 A. That's correct.

30
31 Q. Why was that?

32 A. Well, we had cameras on the property, but with no
33 power we didn't have access to that, and we were concerned
34 about security, so we had - we installed some trail
35 cameras.

36
37 Q. That was Wednesday, the 8th. Did you go back to the
38 property the next day?

39 A. Yes, I did.

40
41 Q. And who went with you on that occasion?

42 A. That was Nick.

43
44 Q. Do you remember the reason you were attending the
45 property on Thursday, the 9th?

46 A. Yes, we were meeting insurance - an insurance assessor
47 and council at the property.

1
2 Q. All right. Do you recall the name of the insurance
3 assessor?
4 A. We just referred to her as Sue.
5
6 Q. Okay. So you and Nick had arranged to meet Sue at the
7 property on Thursday, the 9th, had you?
8 A. Yes.
9
10 Q. Okay. Did Sue arrive with anybody else?
11 A. She had a builder with her. I don't recall his name.
12
13 Q. Right. And what did they do when they arrived?
14 A. They walked around the property, obviously, and
15 inspected the damage. Yeah.
16
17 Q. Did other people attend at the property on that day as
18 well?
19 A. Yes. Matt Glover from the council attended, and he
20 had a builder with him and I think it was two apprentices.
21 They referred to them as apprentices.
22
23 Q. I see. And what were they there for?
24 A. They were giving us what we believe now - well, it was
25 rectification works, what we had to do to make the property
26 safe.
27
28 Q. Did Mr Glover and Sue have discussions?
29 A. We were all standing in the living room on the first
30 floor. So we all had a general discussion about, yeah,
31 steps moving forward.
32
33 Q. And when you say Mr Glover was giving you
34 rectification works to make the property safe, did he have
35 a written document or was he just relaying to you what he
36 thought needed to be done?
37 A. He had a written document that he handed to us.
38
39 Q. Okay. And do you recall if Sue got a copy of that?
40 A. No, she didn't. We asked for a digital copy. He
41 said, "No, this is your copy."
42
43 Q. Okay. And do you recall what items were of particular
44 concern to Mr Glover?
45 A. Yeah. The dirt that had impacted the side of the
46 house, he believed that our retaining wall that was under
47 that was still intact but dirt had come down and filled

1 that gap between the house and the retaining wall. So he
2 wanted that dirt removed. He also - obviously we needed
3 the water diverted in a better way than it was currently
4 being done. So he had laid out some plans for some - the
5 decking at the very front of the property on the ground
6 level to be lifted and pipes to be run underneath the house
7 through that decking, down our front stairs and then onto
8 the drainage system or the drains on Penny Lane. And the
9 final one was he wanted two shipping containers brought
10 into the property to be placed onto the front grassed area
11 to prop up that retaining wall that was holding a lot of
12 water. That was my understanding.

13
14 Q. Did Mr Glover give you any indication of what he
15 thought the source of the water was?

16 A. He indicated that he believed it was a spring.

17
18 Q. And did Sue have any opinion about the source of
19 the water?

20 A. I don't know whether it was at that point that she did
21 or it was a later point that she did express that, yeah.

22
23 Q. You can't recall her having an opinion on that day but
24 you recall that at some point she had an opinion?

25 A. Correct.

26
27 Q. All right. I'll come back to it. The shipping
28 containers, they were to be placed in the front yard; is
29 that right?

30 A. Yes.

31
32 Q. And that sounds a fairly large operation. Did you
33 have any concerns about it?

34 A. Yes, I think there was concerns - I know Sue did -
35 about access, that that would have been - it's a very small
36 road. Access is pretty tight.

37
38 Q. Do you mean access to actually get the shipping
39 containers in?

40 A. Yes, yes. I think she also had some concerns about
41 whether it would be effective or not as well.

42
43 Q. Okay. Was she otherwise content with what Mr Glover
44 had proposed in terms of diverting water and removing dirt?

45 A. Yes.

46
47 Q. Okay. And was it - did you then leave it to her to

1 arrange for those things to be done or was it for you to
2 arrange?
3 A. No, she was arranging that.
4
5 Q. Okay. So that was 9 January, on the Thursday, that
6 you had that meeting. Is there anything else that happened
7 on that day that it's important for the chair to know?
8 A. I think one of the things that concerned us on that
9 day was that - and I believe it was Sue requested in our
10 meeting that we were all there that she speak to Mr Glover
11 privately, and they exited the property and spoke privately
12 without us.
13
14 Q. And that made you uncomfortable?
15 A. Yeah, it was a bit strange, yeah. We weren't sure why
16 they were having a conversation about our property that we
17 weren't privy to. We didn't say anything, but, yeah, it
18 made us very uncomfortable.
19
20 Q. You next returned to the property I think on the
21 following Monday; does that sound right to you?
22 A. The following Monday? No, I don't know that I did.
23
24 Q. When do you recall that you went back to the property?
25 A. After that meeting I don't think I did return back to
26 the property until the 14th.
27
28 Q. Okay. That's fine.
29 A. Nick had --
30
31 Q. There were ongoing --
32 A. Sorry, Nick had returned.
33
34 Q. Yes, thank you.
35 A. Yeah, but I hadn't.
36
37 Q. No, I think you're quite right.
38 A. Yeah.
39
40 Q. Was it Nick who primarily had discussions with
41 Mr Glover and Sue after the meeting on the 9th?
42 A. Yes. Some of them we'd had on speaker phone. So
43 I had been present for some of them. But most of them were
44 with Nick.
45
46 Q. I see. But when Nick had spoken with one of them he
47 would sometimes relay the information to you?

1 A. Yes.
2
3 Q. I see. And was it Nick that told you that Sue had a
4 different opinion about the source of the water?
5 A. I believe I was on that phone call on speaker phone,
6 yes.
7
8 Q. Okay. So you heard Sue explaining her view about it?
9 A. Yes.
10
11 Q. And her view was different to Mr Glover's?
12 A. Yes.
13
14 Q. And what was her view?
15 A. She believed that the water was coming from a drain of
16 some sort, or a pipe. She didn't believe it was a spring.
17
18 Q. Why didn't she think it was a spring?
19 A. Her reason was that a spring will ebb and flow but
20 this water that was coming down was a consistent nature.
21 It didn't change in how fast or how slow it was running.
22 It just ran continuously and consistently.
23
24 Q. Did she have any idea of where the water might be
25 coming from?
26 A. She believed a pipe or a drain under a retaining wall
27 that was up there.
28
29 Q. Up the back of the property?
30 A. Up the mountain, yeah.
31
32 Q. Your retaining wall or --
33 A. No, a retaining wall on 10-12 View Point Road.
34
35 Q. Okay. So that was her opinion as to the likely source
36 of the water?
37 A. Yes.
38
39 Q. Now, I should have asked you before when you were at
40 the property on 9 January was the water still flowing then?
41 A. Yes.
42
43 Q. You could observe it?
44 A. Yes.
45
46 Q. Okay. Now, up to that point in time the insurer had
47 attended at the property, the council had been in

1 attendance, you had been given some works that were
2 required to make the property safe, water was continuing to
3 run and there was no firm identification of the source of
4 the water; is that a fair summary of the salient points up
5 to about 13 January?

6 A. That's correct.

7

8 Q. All right. We then get to the point of the second
9 landslide. How did you first hear of it?

10 A. Nick. Nick had - I was out. Nick had called me.

11

12 Q. Do you remember roughly the time of day?

13 A. In the morning, maybe 9, some time after 9.

14

15 Q. Okay. And what did Nick tell you?

16 A. He told me that the house had come down, basically.

17

18 Q. And did he tell you how he had heard of that?

19 A. At some stage he told me, yes, he had been informed by
20 a friend of his.

21

22 Q. Okay. What else did he say?

23 A. That we needed to get to McCrae.

24

25 Q. Were you far from home at this point?

26 A. No, not far.

27

28 Q. Okay. Did you travel home?

29 A. Yes.

30

31 Q. And you and Nick then headed to McCrae?

32 A. Yes.

33

34 Q. Did you receive any information during your drive to
35 McCrae?

36 A. Yeah. We were listening to the news, we had jumped on
37 social media and seen photos, and we had family calling us
38 because they had heard through the news what was happening
39 up at McCrae.

40

41 Q. And roughly how long is the drive from your house to
42 McCrae?

43 A. About a 50-minute drive.

44

45 Q. And Nick had heard through - did you say a friend?

46 A. (Witness nods).

47

1 Q. And you then heard various reports on the radio.
2 Before you arrived at McCrae did you hear anything from any
3 official source?
4 A. No.
5
6 Q. Okay. What happened when you arrived at McCrae? Were
7 you able to get to the property?
8 A. No. We were - there was a roadblock that had been put
9 in place and we got held up at the roadblock and they
10 wouldn't let us through.
11
12 Q. And so what did you do? Sit at the roadblock?
13 A. Nick contacted Mark Daw, because we had --
14
15 Q. The gentleman from the SES?
16 A. Yeah. He had his number from the previous one, and he
17 spoke with the police officers who weren't letting us
18 through. Eventually - they had to wait until they had
19 heard from their sergeant to allow us to go through, so
20 eventually we did get through.
21
22 Q. Okay. Had you seen photographs of the property before
23 you arrived?
24 A. Yes, we had.
25
26 Q. And so you had a reasonable expectation of what it was
27 you were going to see when you arrived at the property?
28 A. Yes, yes.
29
30 Q. Once you passed through the roadblock were you able to
31 get to the property to see it?
32 A. Yes, yes. We parked a bit closer to the property and
33 then we were escorted through by some SES people.
34
35 Q. Up towards the property?
36 A. (Witness nods).
37
38 Q. And what could you see?
39 A. There was a lot of people. Obviously the house was on
40 its side, I don't know how to describe it, it was shocking,
41 and we were directed to a tent, like a makeshift tent that
42 police, SES were there.
43
44 Q. Could you see if there had been damage to any other
45 property around?
46 A. No, not that I could see.
47

1 Q. Okay. You say in your witness statement that you made
2 enquiries with I think the SES about the location of some
3 of your neighbours?
4 A. Yes. I was asking about Paul and Denise Willigenburg
5 and where they were. They were renting the property in
6 front of us.
7
8 Q. You were just concerned about whether or not they had
9 been caught up in it?
10 A. Yes.
11
12 Q. Okay. And did you get any response?
13 A. The SES were initially - didn't - were confused, and
14 it did send people into a bit of a panic because they
15 didn't know who Paul and Denise were. I then asked - that
16 was the police, sorry. When I went to the SES, they knew
17 who they were and they directed me - they said, "They're
18 over behind the bushes." By this stage there was a lot of
19 media there, so they were sort of behind some bushes near
20 some neighbouring properties. So I went to them.
21
22 Q. So you knew that they were okay?
23 A. (Witness nods).
24
25 Q. Did you speak with them?
26 A. Yes, I spent the morning with them.
27
28 Q. Okay. Were you able to be told anything about what
29 had happened by anybody at the scene?
30 A. No, no-one really - not me. I spent most of the time
31 with Paul and Denise. I know Nick spoke with the SES and
32 the police a lot.
33
34 Q. Did you know from - or did you think you knew from
35 what you had read that there had been a second landslide --
36 A. Oh, yes. Yes.
37
38 Q. -- or were you worried that the house had just
39 collapsed by reason of the first?
40 A. No, no, no, we knew that there had been a landslide.
41
42 Q. Okay. And when you looked at the property was that
43 obvious?
44 A. Yes.
45
46 Q. In terms of the amount of earth?
47 A. Yes. So, contrary to a lot of reports, the property

1 didn't slide 50 metres down the hill. It was - the hill
2 slid down and hit the property and split it in half. So
3 you could see that there was a lot of land missing that had
4 previously been there and that the property was - one half
5 had gone one way and the other half had gone the other way.
6

7 Q. Right. And so what did you and Nick do on the 14th
8 when you were there? Did you stay for long?

9 A. We did stay there for a while. Obviously it became
10 clear that there was nothing that we could do, and we left.
11 Probably not until late afternoon.
12

13 Q. Was the property accessible in any way to get other
14 things out of there?

15 A. No.
16

17 Q. And was it roped off so that people couldn't enter?

18 A. Yes, that whole section of the road was roped off.
19

20 Q. I see. Do you recall if - while you were in
21 attendance in the area on the 14th if you spoke to anybody
22 from the council?

23 A. No.
24

25 Q. You don't recall or you did not?

26 A. Oh, no, I didn't. No, I didn't speak to anyone from
27 the council. Oh, a phone call. I think I had a phone
28 call, yes.
29

30 Q. All right. Do you recall if you spoke to somebody on
31 the phone call?

32 A. No, I had missed phone calls, but Nick had also
33 received them, so - and he had spoken to someone.
34

35 Q. I see. You can't now recall who it was?

36 A. It was someone from council, but, no, I don't know
37 who.
38

39 Q. And so did you return to Melbourne on the 14th?

40 A. Yes.
41

42 Q. Do you recall roughly when?

43 A. Maybe around 4 o'clock we left McCrae.
44

45 Q. Okay. The kids weren't with you on this trip?

46 A. No. Oh, my daughter did come down. Yeah. We had
47 sent them a message. My son, he had found out through

1 work.

2

3 Q. I see.

4 A. But my eldest daughter had come down - we had left a
5 message just saying, "This is what's happened." Obviously
6 we knew it was all over the media. And so my eldest
7 daughter had driven down as well and been with us for the
8 afternoon.

9

10 Q. And the other two children, who didn't travel with
11 you, they had already found out about the event; you didn't
12 need to inform them?

13 A. Yes, yes.

14

15 Q. They found out in a similar way to you?

16 A. Yes.

17

18 Q. I see. Now, Ms Moran, that covers the topics that
19 I wanted to address with you in the course of this
20 examination. But before I sit down I just wanted to ask
21 you if there is anything else that you want to let the
22 chair know or if there's anything that I've missed that's
23 important for you to say to this board of inquiry?

24 A. Thank you. I just - we're really grateful for this
25 inquiry, that this has been established, and we're really
26 grateful for all the board and how they've treated us.
27 We've been treated with such kindness. It's the first time
28 since the 5 Jan landslide that we've felt like we are in
29 caring and capable hands, and we're really hoping that a
30 lot of questions will be answered for our neighbours
31 particularly. They still - especially those who are still
32 not in their homes. And we hope that progress can be made,
33 especially for the Willigenburgs and the McLeans, who have
34 been dealing with this since 2022. So we're very thankful.

35

36 CHAIRPERSON: Thanks for your evidence, Ms Moran. I just
37 have a couple of questions for you about water.

38 A. Yes, sure.

39

40 CHAIRPERSON: When you attended on 14 January after the
41 landslide could you still observe at that time water
42 flowing through or around the house?

43 A. Yeah. So we - we went to the side of the house. We
44 couldn't actually see, other than when we walked to the
45 tents and then when we walked home. But you could still
46 see water running down Penny Lane into that drain.

47

1 CHAIRPERSON: And you said earlier that you saw water
2 flowing consistently from the date of the first landslide,
3 5 January. Can you describe how fast that water was
4 flowing? If you think about - if you compare it to, say, a
5 river, was it a fast-flowing - was it like a fast-flowing
6 river through the house, or a slow-flowing river or a
7 trickle?

8 A. It felt - yeah, no, it wasn't a trickle. It was
9 probably a lot more - a little bit more than that. I think
10 it was flowing way more than a trickle. I don't know if
11 I would say it was a river, but it was - yeah, I think
12 particularly the stairs, when I remember it coming down the
13 stairs, so that felt like it was fast because it was
14 dropping down each time. But even after that, and photos
15 and video that Nick had sent me, you could see it was
16 consistent. It just didn't - it didn't ever slow down that
17 I noticed it.

18
19 CHAIRPERSON: So if you were to walk up the stairs while
20 the water was flowing down would you get water in your
21 shoes?

22 A. Yes.

23
24 CHAIRPERSON: Thank you. Are there any questions? No.
25 That completes your evidence, Ms Moran. Thank you very
26 much for coming along.

27 A. Thank you.

28
29 <THE WITNESS WITHDREW

30
31 MR COSTELLO: Madam Chair, the next witness is Nicholas
32 Moran. Would you like to take the morning break now or
33 would you like him to commence his evidence and then take
34 the break?

35
36 CHAIRPERSON: We might start. Thanks, Mr Costello.

37
38 MR COSTELLO: Yes, all right. Then I call Nicholas James
39 Moran.

40
41 <NICHOLAS JAMES MORAN, affirmed:

42
43 <EXAMINED BY MR COSTELLO:

44
45 MR COSTELLO: Mr Moran, there's some water there if you
46 would like to pour yourself a cup at any stage.

47 A. Thank you.

1
2 Q. Could you state your full name for the record, please?
3 A. Nicholas James Moran.
4
5 Q. And you live at an address known to the board of
6 inquiry?
7 A. Yes.
8
9 Q. And your current occupation?
10 A. I'm an IT director.
11
12 Q. Thank you. Now, Mr Moran, you've made a witness
13 statement for the board of inquiry. Do you have a copy
14 with you?
15 A. I do.
16
17 Q. You do. Are the contents of that statement true and
18 correct?
19 A. Yes.
20
21 Q. Could I ask you, please, to sign that statement on the
22 final page. Thank you. Madam Chair, I tender that
23 statement and the exhibits thereto.
24
25 CHAIRPERSON: Thank you. The statement of Nick Moran is
26 exhibit CA16, and the documents referred to in Mr Moran's
27 statement will be part of CA16. And the same applies in
28 relation to CA15, which is Ms Moran's statement.
29
30 **EXHIBIT #CA16 STATEMENT OF NICK MORAN AND ATTACHED**
31 **DOCUMENTS.**
32
33 MR COSTELLO: Thank you, Madam Chair. Mr Moran, together
34 with your wife, Kellie, who we've just heard from, you own
35 the property at 3 Penny Lane?
36 A. That's right.
37
38 Q. All right. Can you just explain the circumstances by
39 which you came to acquire that property?
40 A. Yes. It was - we were looking for something. You
41 know, it was a - I had recently sold my business after sort
42 of almost 30 years and we were looking to sort of in a way
43 reward the family and have something pretty special for us.
44
45 Q. All right. You hadn't had a holiday home to that
46 point?
47 A. No. We had an onsite caravan.

1
2 Q. I see. And this was the upgrade after the end of
3 30 years of work, was it?
4 A. It was, yeah.
5
6 Q. Okay. Was it always an intention to buy in or around
7 McCrae?
8 A. We did look elsewhere, but my wife, Kellie, was dead
9 set on McCrae was the place to be.
10
11 Q. Okay. We've just heard, as you know, quite a bit of
12 evidence from Kellie about the property. But could you
13 perhaps describe the property to us in your own words?
14 A. Yes. It's a - it was a three- or probably almost a
15 four-storey property. It's funny, you know, we spoke about
16 I hate the beach, I hate the sand, but I like to see it.
17 Kellie loves the sand but isn't fussed about the view. So
18 this was the perfect compromise for us.
19
20 Q. I might just show you a floor plan of the property.
21 It's RES.0009.0001.0006, I hope. Now, it's slightly
22 complicated geography here, which causes houses to be
23 slightly complicated, but the ground floor there, that's at
24 street level as you enter Penny Lane, is it?
25 A. It's up quite a number of stairs but, yeah, it's close
26 to street level.
27
28 Q. All right. And the first level looks as though it's
29 not really for family activity so much as sleeping unless
30 you're on the deck?
31 A. Yeah, spot on.
32
33 Q. And then the main level of activity is the second
34 floor?
35 A. Correct.
36
37 Q. And there's a deck on the ground floor but also a
38 balcony on the second floor?
39 A. Yes, the balcony is where we spent the majority of our
40 time if we had people there or even without.
41
42 Q. And that's where you got your view?
43 A. Yes, I got my view, and I didn't sort of move from
44 there much.
45
46 Q. I see. And we can see the laundry there up to the top
47 of the screen on the second floor inset, and that's around

1 the area - the back of that's around the area where the
2 first landslide impacted, is it?
3 A. Yeah, the first landslide took out the whole of the
4 laundry and the whole of the bathroom, pretty much the
5 whole side of the house that jutted out.
6
7 Q. Yes, and we saw a picture earlier of a door coming
8 through into that hallway near the stairs?
9 A. Yeah.
10
11 Q. And that's the door of the laundry?
12 A. Correct.
13
14 Q. And what was on the third floor?
15 A. The third floor was - we turned it into a bit of a
16 bedroom, but it had an, you know, unobstructed view of the
17 ocean, and it was almost like, you know, another living
18 area that the kids quickly occupied when they had mates
19 over.
20
21 Q. Okay. That floor plan can come down, please. Is it
22 fair to say the third floor was mixed use: if it needed to
23 be a bedroom, it was; if there weren't that many people in
24 the house, it would be used as a living area?
25 A. Or a room for Xbox, yeah.
26
27 Q. Right. Was that for you?
28 A. Pretty much.
29
30 Q. Okay. You attended the inspection of the property in
31 March with Kellie?
32 A. I did.
33
34 Q. And the real estate agent. Did you notice the
35 temporary fencing that Kellie spoke about?
36 A. I can't remember noticing it. It was certainly -
37 Kellie pointed it out to me soon after. I was more focused
38 on just the house itself and going around and having my own
39 look.
40
41 Q. Okay. In any event, Kellie mentioned to you that she
42 had spotted it?
43 A. Yes.
44
45 Q. And did that cause you then to make some enquiries
46 with the real estate agent about it?
47 A. Kellie made some enquiries with Mr McConnell at the

1 time, and she just felt - she felt his answer was a little
2 off or non-committal, and that caused her to sort of Google
3 search it and then - so on the drive home back to Melbourne
4 we - you know, we started researching it and found out
5 there had been sort of a landslide earlier and, you know, a
6 couple of news articles about it, and then from there I -
7 we loved - we absolutely loved the house. You know, we
8 loved everything about it. It was perfect for us. But we
9 decided, you know, until we've got some confidence around
10 this we wouldn't be proceeding with it. I explained that
11 to the lady I was dealing with, the real estate agent I was
12 dealing with, I explained that to her, that, look, until we
13 got some confidence around that we wouldn't be pursuing
14 this property.

15
16 Q. Let me just make sure I've got the personalities right
17 here. You mentioned a Mr McConnell?

18 A. Yes.

19
20 Q. Was he one of the real estate agents?

21 A. Yes. I think Mrs Charkas, she was unavailable at the
22 time, so I believe he's the business principal there.

23
24 Q. I see. Charkas is C-h-a-r-k-a-s?

25 A. Yes.

26
27 Q. So that was the other real estate agent you were
28 dealing with, was it?

29 A. Correct.

30
31 Q. Okay. And so you weren't entirely satisfied with
32 the answer you'd received from Mr McConnell, and you then
33 made a further enquiry with Ms Charkas, did you?

34 A. I did.

35
36 Q. All right. And what did you say to her?

37 A. It was along the lines of we won't be - we really like
38 the property but we won't be pursuing it until we got some
39 sort of confidence - until we got some confidence around
40 the answers that we were getting.

41
42 Q. What did she say to you?

43 A. She said she'll look into it.

44
45 Q. Okay. And did you hear back from her?

46 A. Yes, she came back with an email - sort of - it was
47 sort of cut and pasted a couple of emails, I think, to

1 protect the current owners at the time of the property,
2 basically giving us a little bit of information around -
3 from the council that there had been a slip but it didn't
4 affect the property and it was all pretty much under
5 control.
6

7 Q. All right. Could I have on the screen, please,
8 RES.0009.0001.0009. This is an email from Ms Charkas to
9 you, and it's dated 5 May - sorry, 5 March. Is this the
10 email you're referring to?

11 A. Yes, it is.
12

13 Q. All right. And what's happened here is you've spoken
14 with the agent, the agent has contacted the vendor and the
15 agent is here relaying the vendor's response to you?

16 A. Correct.
17

18 Q. I see. And mentions first the fact that there had
19 been heavy downfall; do you see that?

20 A. Yes.
21

22 Q. And then talk of investigations identifying that the
23 slip was most likely caused by a combination of some
24 problems with council drainage on View Point Road and
25 coincidentally a burst water pipe on the property?

26 A. Correct.
27

28 Q. That property there is the property above yours at
29 10-12 View Point Road?

30 A. That's right.
31

32 Q. And you were told that that pipe had been repaired?

33 A. Yes.
34

35 Q. And that there were to be works on View Point Road by
36 the council?

37 A. Correct.
38

39 Q. So you read all of this when you received it?

40 A. Yes.
41

42 Q. And did it satisfy you?

43 A. That combined with the information from the council
44 that was cut and pasted into - on the bottom of this email.
45

46 Q. All right. So we'll go to the next page. Is that
47 what you're referring to there?

1 A. Yes, that's right.
2
3 Q. All right. So just explain to the chair what this is?
4 A. Yes. So this is just information to the previous
5 vendor about the drainage case, in particular focusing on
6 the water, and it just talks about their works, that
7 they're currently awaiting materials and should be arriving
8 any day now.
9
10 CHAIRPERSON: This is an email from council to the
11 previous owner?
12 A. Yes. I think the signature might be - I think the
13 signature was in there.
14
15 MR COSTELLO: I see.
16 A. But, yes, it's a member of council.
17
18 Q. So you understood that Mr Trebilco, if I've pronounced
19 it correctly, was with the council?
20 A. Correct.
21
22 Q. I see. So, having received the information that had
23 been passed on to you by the vendors of the property in
24 combination with this information that had been provided by
25 the council to the vendors, you were satisfied that you
26 understood what you needed to understand about the 2022
27 landslide?
28 A. And combined with the fact that, you know, nothing had
29 ever - you know, it wasn't an issue at Penny Lane or,
30 sorry, 3 Penny Lane.
31
32 Q. Yes.
33 A. Yeah, combined with what, we were very comfortable and
34 we submitted an offer which was accepted.
35
36 Q. All right. And so roughly - I think that Kellie said
37 that she had spotted the temporary fencing when standing on
38 the balcony?
39 A. Correct.
40
41 Q. And roughly how far away would you say the temporary
42 fencing was from the balcony?
43 A. Twenty, 30 metres.
44
45 Q. Okay. Thanks very much. So you then made an offer,
46 did you say?
47 A. Yes.

1
2 Q. Before you made an offer did you cause property
3 searches to be undertaken?
4 A. Yes, so just I guess the regular property searches,
5 sort of, you know, Landchecker, and then to - we wanted to
6 make sure that there was no - I guess there was no
7 overlays, there was - you know, I'm not, you know, an
8 engineer, so I don't quite understand all that. But also
9 we contacted two insurance companies to make sure that, you
10 know, there wasn't any issues there from an insurance
11 perspective.
12
13 Q. You contacted two insurance companies about whether
14 you could get insurance; is that what you mean?
15 A. Whether we could get insurance and, you know, whether
16 there were significant premiums. You know, we didn't know
17 what we didn't know.
18
19 Q. I see. And did you have a conveyancer or a solicitor
20 doing this transaction for you?
21 A. We did.
22
23 Q. Okay. And did they look at all of these searches?
24 A. Yes, they did all the searches, and there was nothing
25 out of the ordinary.
26
27 Q. I see. And so on that basis you were content to
28 proceed with acquiring the property?
29 A. Absolutely.
30
31 Q. And do you recall roughly when settlement was?
32 A. I should know this, but I think it was early May.
33
34 Q. Okay. Of 2023?
35 A. Correct.
36
37 Q. Now, when you acquired the property did you acquire it
38 with the intention of doing any renovation works?
39 A. No, it didn't need a thing.
40
41 Q. Okay. And you didn't do anything?
42 A. No. We added some ceiling fans, and I'm in tech, so
43 I like my power points and bits and pieces everywhere, so
44 I, you know - but apart from that.
45
46 Q. Nothing structural?
47 A. Not at all.

1
2 Q. No addition to the property?
3 A. Didn't need anything.
4
5 Q. Okay. Was the property fully landscaped when you
6 bought it?
7 A. Yes.
8
9 Q. Did you need to do any work on the landscaping of the
10 property?
11 A. Not at all.
12
13 Q. And Kellie's already mentioned there was a retaining
14 wall at the front; is that correct?
15 A. Correct.
16
17 Q. And at the back?
18 A. Yes.
19
20 Q. Need to do any work in connection with the retaining
21 walls?
22 A. No.
23
24 Q. Okay.
25 A. It was a - you know, we honestly - we couldn't fault
26 the property.
27
28 Q. Again, using the property shortly after you settled on
29 it?
30 A. I think we were in there the first night, yeah.
31
32 Q. Okay. And then using it whenever you could from that
33 point on?
34 A. Yeah. I purchased a golf membership down there, so
35 I tried to get down there as often as I could, and the fact
36 that my wife and I both work from home, we took the
37 opportunity to get down there as often as we could, and our
38 kids - you know, we've got two kids driving now, so they
39 would get down there often with their mates.
40
41 Q. Okay. So is it right that you were there as much -
42 perhaps more than anybody else that used the property?
43 A. I think Kellie, my wife, she probably had me covered
44 over school holidays and things. But if I played golf I'd
45 pretty much stay there a couple of nights and got a couple
46 of games in.
47

1 Q. During the week?
2 A. Yeah.
3
4 Q. Now, when you acquired the property did you have any
5 understanding that there were residents of properties in
6 the vicinity of yours that were currently subject to an
7 order that meant they couldn't use their property?
8 A. Not until we sort of met the - met one of the
9 neighbours.
10
11 Q. Who was that?
12 A. That was Jon McLean.
13
14 Q. Okay. And do you recall how long after you had bought
15 the property that you first met Mr McLean?
16 A. It was probably six months, maybe, somewhere sort of
17 December of that year.
18
19 Q. Okay. And how did you come to meet him?
20 A. Just in the driveway. He was there just tidying up
21 the garden and - and yeah.
22
23 Q. What did you learn about his property?
24 A. Well, we quickly found out that he hadn't been in
25 since the 2022 landslides and that he wasn't allowed, he
26 was under an evacuation order.
27
28 Q. So what was he doing there?
29 A. He was just there just tidying up the garden outside,
30 and he also plays the occasional game of golf down there
31 and was just coming past to collect mail and do those type
32 things.
33
34 Q. Okay. Now, was that a cause of any concern to you
35 when you discovered that there were residents that were not
36 permitted into their properties?
37 A. It wasn't a concern for us. I mean, our concern was
38 entirely around them. I mean, we were just so sympathetic
39 for what they were going through and, you know, they're a
40 fair bit older than us, and we were just - you could tell
41 the toll it had been taking on them.
42
43 Q. I see. You and the family had been using the property
44 over the Christmas break, December 2024, January 2025?
45 A. Absolutely.
46
47 Q. When did you get down there? After Christmas?

1 A. Yeah. We were probably there for a couple of weekends
2 before Christmas as well. But it was soon after Christmas,
3 like, we normally go down there Boxing Day. I can't
4 remember exactly.

5
6 Q. I see. And you took the kids with you?

7 A. Well, they're sort of at the age now they're taking
8 themselves, so - yeah. But, yeah, the kids were sort of
9 sometimes there, sometimes not. Everyone's got jobs as
10 well. So it's a little bit of a rotating group.

11
12 Q. And did you have other - any other members of the
13 family stay after Christmas at the property?

14 A. Yes, we would have extended relatives, we'd have
15 friends, we'd have the kids' friends. As I said, on any
16 one night there seemed to be - you know, there was only -
17 we had a conversation during that time I think there was
18 only one night that, you know, us as a group of five were
19 only there together. It always encompassed other people
20 during that time.

21
22 Q. Okay. In any event, by 5 January it was only you,
23 Kellie and the kids that were at the property?

24 A. That was that night, yeah. That was the first night.
25 4 January was the only night I think we had to ourselves.
26 We actually, you know, made comment how nice it was. No
27 offence to anyone that stayed with us.

28
29 Q. In any event, you decided to enjoy it by going out for
30 dinner?

31 A. Yeah, we went local.

32
33 Q. And you left back for Melbourne from the dinner?

34 A. From the restaurant, yes.

35
36 Q. Okay. And did you take any of the kids with you?

37 A. I took Keira, our youngest.

38
39 Q. Okay. And you were heading back for work, were you?

40 A. I was heading back for work, and she had work as well.

41
42 Q. And your son went back on his own steam?

43 A. Correct.

44
45 Q. And do you remember about what time it was when you
46 left the restaurant to return to Melbourne?

47 A. At a guess, 7.30, somewhere around there. We had a

1 reasonably early dinner.

2

3 Q. Okay. And while you were in the car you received a
4 call from Kellie?

5 A. Yes.

6

7 Q. What did she say?

8 A. She said, "I think there's been a landslide," and, as
9 you do, you question that, and I said, "What do you mean?"
10 She goes, "I seriously think there's been a landslide." So
11 I turned around and headed back straightaway.

12

13 Q. Did she give you any description of what had happened
14 during that phone call?

15 A. Yeah, I asked for just some information. I could tell
16 that, you know, she was in shock. So it was a tough phone
17 call, and she would - she explained that the whole hallway
18 had been essentially caved in and it narrowly missed Bella.

19

20 Q. That's your other daughter?

21 A. Yeah.

22

23 Q. And so what did you do?

24 A. Immediately turned around and headed back there.

25

26 Q. Okay. And how long did it take you to get back to the
27 house?

28 A. Probably about 15 or 20 minutes.

29

30 Q. By the time you got back was there anyone else there
31 with Kellie and your daughter?

32 A. Yeah, there was a lot of SES, SES vans and lots of
33 lights and activity.

34

35 Q. Did you spot Kellie and Isabella straightaway?

36 A. Yes.

37

38 Q. All right. And you checked on them, no doubt?

39 A. Yeah, for sure.

40

41 Q. And what state did you find them in?

42 A. They were okay. They were clearly, clearly in shock.
43 My daughter - I think she got this from me, but my daughter
44 has a tendency to sort of smile nervously, and - but
45 clearly, clearly they were in shock.

46

47 Q. Okay. Did you take it upon yourself to speak with the

1 SES personnel that were present?
2 A. I did.
3
4 Q. Okay. And what did they tell you?
5 A. They said there's been some - there appears to be some
6 sort of landslide or slip towards the back of the house and
7 they're investigating.
8
9 Q. Okay. When was it you heard about there being water
10 in the property?
11 A. I think by that stage the water had already started to
12 come down the stairs, and the immediate concern was that
13 being a - the assumption made was it was the laundry. So
14 the assumption made was that it was just pipes burst and -
15 you know, and that was just considered the answer. And
16 then - so they were making arrangements with the various
17 services around to try to shut off the water.
18
19 Q. Did you know whether the water had been shut off when
20 you arrived?
21 A. It hadn't. They couldn't locate the valve on the
22 property. We eventually located that, and I was there when
23 they actually shut it off. They sort of had to dig it out
24 and then shut it off, and we quickly realised that it
25 hadn't stopped.
26
27 Q. Was the power off?
28 A. At that stage it was, yeah.
29
30 Q. Okay. And so were you allowed to enter the property?
31 A. Not sure "allowed" would be the word. I just -
32 I stood back and let the SES sort of do their stuff.
33
34 Q. I see. How long after you had arrived was it before
35 you went into the property?
36 A. I don't think it - I don't think it was too long, to
37 be honest. It was a little bit of a blur at that time.
38 I was - yes, I was pretty shaken.
39
40 Q. Do you have any recollection as you sit there now of
41 going into the property on that night?
42 A. Yeah, I do. Yep.
43
44 Q. And do you have a recollection of what it was that you
45 saw?
46 A. Yeah, and I took some video with me as I walked
47 through.

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Q. Yes. We'll come to that.

A. Yep. And it was almost like a waterfall by design down the stairs, and it was - there was a lot of debris, a lot of dirt, a lot of water, and it was then that it just hit me how - that it - where Bella was standing, it just would have killed her just instantly. It would have taken her out.

Q. Was it on the first time that you went into the property on that night that you took the video or did you take the video later?

A. It was later.

Q. Okay. So you had an initial inspection and at some point later on you went back into the property?

A. Correct.

Q. And do you have a rough recollection of how late that was in the night?

A. I'm not sure. Maybe - it was definitely dark by that stage. So, you know, when this happened it was light, when the landslide happened. But when I took the video it was dark. So I'm thinking it was an hour or so later.

Q. All right. I might play that video at this point in time, fingers crossed. It's RES.0009.0001.0011. Madam Chair, I've asked for the sound on the video to be muted while it's playing. In the version that will be tendered there are comments being made by Mr Moran as he walks through. But for present purposes I think it's better to see the visual rather than to hear the comments.

CHAIRPERSON: Yes.

MR COSTELLO: If that could be played, please. Mr Moran, while this is playing, if you could just describe where in the house we are?

A. Yeah, so this is at the top of the stairs on the main living area or living level. You can see where the water's sort of got into. You know, I'm just going around there to get some valuables or some keys and some bits and pieces. So that was primarily what I was doing in this video.

Q. And there's some other people in the --

A. So this is the kitchen area --

1 Q. Sorry. There's some other people in the house from
2 the SES at the time you're doing this?
3 A. Yeah. There were so many people coming and going that
4 it was really hard to know who was who. Sorry, my camera
5 work's not great.
6
7 Q. This is the second floor?
8 A. Yeah, it is. It's the main sort of living area, but
9 you can see the amount of water that is there even though
10 the majority is running down the stairs. And that's the
11 hallway. That's where my daughter was standing, and just
12 by sheer fluke she stepped out of the way.
13
14 Q. Now, it's a little hard to tell. Is there water on
15 these stairs as you're walking down?
16 A. Yeah, there is. It was quite a dangerous walk down
17 the stairs. So this is just the entry foyer, I guess, and
18 to the left of the screen is our bedroom and sort of, you
19 know, I guess an adult retreat. And on the right is a
20 kids' bedroom as well.
21
22 Q. Were you surprised by the water that you were seeing
23 as you came in?
24 A. Oh, yeah, absolutely. But, again, I just assumed it
25 was a broken pipe. This is our bedroom.
26
27 Q. Is there water there?
28 A. Water had got up there on - there wasn't any coming
29 down the stairs, but there had been some water. I don't
30 know if it was coming off, you know, the boots and people
31 walking it through.
32
33 Q. All right. We can turn that off now, thank you.
34 Before you went in to make - to collect the items that you
35 just mentioned and made that video, had you spoken with
36 Mr Daw from the SES?
37 A. Yes.
38
39 Q. All right. And did he introduce you to another
40 gentleman?
41 A. He did, yes.
42
43 Q. And how did he describe that person?
44 A. So he introduced me to a few people that night. He
45 talked about --
46
47 Q. Did he introduce you to a tradesman?

1 A. Yes, he did.
2
3 Q. All right. What did he tell you about that person?
4 A. I can't remember the name. I'm not even sure he
5 mentioned the name. But he just said, "He is - he's from
6 the property above and he recently constructed the
7 retaining wall up there."
8
9 Q. The property behind yours?
10 A. Yes, behind ours, sort of pretty much above, which was
11 10-12 View Point.
12
13 Q. Thank you. Do you recall what time you left the
14 property that night?
15 A. I don't, to be honest. It was late. But it was
16 after - I think it could have been 11 o'clock.
17
18 Q. Okay. And did you all go back to Melbourne in the one
19 car?
20 A. No, I went back. Kellie and the kids left - or Kellie
21 and Bella left earlier, and I stayed there just to -
22 I mean, I really didn't know what to do. You know, the
23 property was - had all these people going through it. It
24 was open. I didn't know what my responsibility was.
25
26 Q. So when you finally left were there still people at
27 the property or had everyone gone?
28 A. No, there were people there.
29
30 Q. Right. And so you couldn't secure the property when
31 you left?
32 A. No.
33
34 Q. Okay. Do you recall if you left a key with anybody?
35 A. I gave them a pin code. We've got a digital lock. So
36 I gave them a pin code and gave them access.
37
38 Q. Okay.
39 A. And SES had - I was concerned - I was concerned about
40 property getting damaged and things like that. So SES said
41 they would move some of the furniture around, which they
42 did.
43
44 Q. And do you recall at some point in the night before
45 you returned to Melbourne meeting with the regional
46 commander of the SES?
47 A. I do.

1
2 Q. Okay. And do you recall anything about your
3 discussion with him?
4 A. Not anything that stood out.
5
6 Q. Okay. Do you recall that he gave you advice to
7 contact your insurer?
8 A. Yes.
9
10 Q. Okay. And do you recall when you first did contact
11 your insurer?
12 A. Yes, this sticks out in my memory. I rang them from a
13 car out on the road and it was probably 9 o'clock that
14 night, I'd say.
15
16 Q. Okay. And did you report the fact of the landslide?
17 A. I did. That took a little bit of effort. They
18 couldn't get past the fact that it wasn't a retaining wall
19 sort of falling down. And I said, "No, it's a landslide."
20 They didn't have a category to even log it. So it took a
21 little bit of effort.
22
23 Q. Still staying with that first night at the property
24 before you returned to Melbourne, did you meet anybody from
25 the council that night?
26 A. I met Mr Glover.
27
28 Q. Okay. And were you introduced to him as holding any
29 particular role?
30 A. I just assumed he was the expert on this type of
31 issue.
32
33 Q. Okay. Did you meet Mr Pope that night?
34 A. I don't think so, no.
35
36 Q. Do you recall that he attended at the property?
37 A. I believe he did, yes, really late.
38
39 Q. I see. But you don't remember being introduced to
40 him?
41 A. No. I was aware of him coming and, you know,
42 obviously I was asking a lot of questions and getting -
43 getting told what I needed to know, which was very little.
44 And I was told that he was - he had been someone that
45 worked at Thredbo or, you know, that type of role and that
46 I'll be in very good hands.
47

1 Q. I see. Did you have any conversation so far as you
2 can recall with anybody that was at the property that night
3 about the source of the water?
4 A. I don't believe so that night.
5
6 Q. Okay.
7 A. It was still too early. It was still considered
8 probably a burst pipe or - you know, they were trying to
9 shut it off. I think all those conversations happened
10 after I had left.
11
12 Q. I see. And so you were told, were you, that there was
13 no point for you staying on at the property that night?
14 A. Correct.
15
16 Q. And you decided to return to Melbourne?
17 A. Yes.
18
19 Q. And did you say you thought it was around 11 o'clock;
20 is that what you said earlier?
21 A. I think so, yes.
22
23 Q. In any event, it was late?
24 A. Yes.
25
26 Q. And when you left the property was there still water
27 flowing through the inside of the property?
28 A. Yes.
29
30 Q. And were you aware of whether the SES were trying to
31 do anything about that?
32 A. Yes, there were multiple services involved at this
33 stage. So I think they were attempting to dig up different
34 areas to try to shut off valves and things like that. But
35 I know there was - I don't quite understand - I didn't
36 quite understand what was going on. There was just so much
37 happening. So SES were just trying to tell me that, you
38 know, they've got it under control, "Leave it with us," and
39 they were fantastic in their communication.
40
41 Q. Do you recall sandbags being used?
42 A. Yes.
43
44 Q. Do you recall whether they were being used inside the
45 property or only outside the property?
46 A. I think both. Definitely inside. There was a couple.
47 There were probably a few, actually, inside the property.

1 And I remember a couple of the SES guys actually going
2 across to the beach to take the sand from the beach to fill
3 them up.

4
5 MR COSTELLO: Madam Chair, would that be a convenient
6 time?

7
8 CHAIRPERSON: Yes. Mr Moran, have a break and we'll
9 return at 12 o'clock.

10
11 **SHORT ADJOURNMENT**

12
13 MR COSTELLO: Thank you, Madam Chair. Continuing with
14 Mr Moran.

15
16 CHAIRPERSON: Yes, thank you, Mr Costello. Mr Moran, I'm
17 going to stand for a little while because I've got a bad
18 back.

19 A. No worries.

20
21 MR COSTELLO: Mr Moran, before we broke we got up to the
22 end of the evening of the 5th and you had returned home to
23 Melbourne late in the evening. I'll come to some specific
24 days soon, but before we do that just in general terms for
25 the next week or so after the landslide occurred were you
26 often at the property?

27 A. Yes.

28
29 Q. When you say "often" what do you mean? Sort of --
30 A. Daily.

31
32 Q. -- every other day or --

33 A. No, it's probably two out of every three days.

34
35 Q. Okay. Were there any particular reasons why you were
36 at the property that regularly?

37 A. I was meeting a variety of people, from our insurance
38 assessors to the council, and just generally feeling like
39 I needed to be there.

40
41 Q. Were there often others at the property while you were
42 there?

43 A. Yes.

44
45 Q. From SES?

46 A. In the initial days, yes.

1 Q. And from the council?
2 A. Yes.
3
4 Q. From your insurers?
5 A. Yes.
6
7 Q. And at this point in time did you have to be there to
8 unlock the property to let others in or was the property
9 unsecured?
10 A. Technically it was unsecured, obviously with the back
11 of the house missing. And I had given the PIN number to
12 those people, but I tended to meet them there if they
13 needed access to inside the house.
14
15 Q. All right. Do you recall being provided with an
16 evacuation notice at any point?
17 A. No.
18
19 Q. Okay. Let try and go back to the chronology. The
20 next day after the landslide was Monday, the 6th. Do you
21 recall whether you went to the property that day?
22 A. I did.
23
24 Q. Okay. And this is relatively early days so is it safe
25 to assume that there were SES responders at the property
26 while you were there?
27 A. Correct.
28
29 Q. Did you notice, so far as you can recall, whether
30 anything had changed from the night before?
31 A. No. SES had moved some furniture around to, I guess -
32 well, for our benefit to ensure they didn't get damaged by
33 water.
34
35 Q. Okay.
36 A. And we felt they went above and beyond.
37
38 Q. Was there still water coming through the house on the
39 6th?
40 A. Yes.
41
42 Q. Were the sandbags in place to divert it?
43 A. Sandbags were. There was still water there. I'm
44 trying to remember whether it was coming down the stairs,
45 but certainly the water was free flowing definitely out and
46 under the house.
47

1 Q. And so far as you could tell did it appear to be
2 flowing more or less slowly or relatively the same from the
3 day before?
4 A. It was the same.
5
6 Q. Same. You met with Mr Daw and with Mr Glover --
7 A. Correct.
8
9 Q. -- on the 6th; do you recall that?
10 A. Yes. I think Mr Glover came later because he had been
11 there until the early hours of the morning.
12
13 Q. You were told that control was passing from the SES to
14 the council?
15 A. Correct.
16
17 Q. Who told you that?
18 A. It would have been Mr Daw.
19
20 Q. Thank you. Now, did either the council or the SES
21 know where the water was coming from at this point?
22 A. No.
23
24 Q. Did either Mr Daw or Mr Glover have any idea of where
25 the water might have been coming from?
26 A. No. I guess the standard response we tended to
27 receive throughout the whole journey was throwing up all
28 options.
29
30 Q. I see. Was it on the 6th that you first heard of
31 the possibility of dye testing?
32 A. Correct.
33
34 Q. And what did you understand the purpose of dye testing
35 to be?
36 A. Just to trace where the water was starting and then
37 coming out.
38
39 Q. Okay. And what did you understand to be the options
40 in terms of where the water was coming from?
41 A. Natural spring; drainage; and whether it be, you know,
42 actual water, like, water for houses.
43
44 Q. And do you recall whether anyone had mentioned the
45 idea of a natural spring to you?
46 A. Yes.
47

1 Q. Okay. As you sit there now do you remember who it was
2 that mentioned natural spring?
3 A. I think everyone's mentioned natural spring. It was
4 definitely Mr Glover and - but, you know, Mr Daw was just
5 repeating a lot of what was being said.
6
7 Q. Okay. Did you speak with Mr Willigenburg on the
8 Monday, the 6th?
9 A. I did.
10
11 Q. Okay. And what do you recall of that conversation?
12 A. It was an interesting conversation sort of finding out
13 their history and what they had been through. The
14 information about them seeing - or Mr Willigenburg seeing
15 water in the drains out the front when there hadn't been
16 rainfall for such a long time in quite a hot summer was
17 very telling. And once the slip had happened I believe
18 those drains were bone dry.
19
20 Q. Did Mr Willigenburg explain to you that he had made
21 enquiries about the water flow in the drains?
22 A. Yes, he said he logged a ticket with council for
23 I believe some time mid-December.
24
25 Q. And did he say to you whether or not he had received
26 any response?
27 A. No, he hadn't received a response.
28
29 Q. Thank you. That was Monday the 6th. You attended
30 again at the property on the next day, Tuesday, the 7th?
31 A. Yes.
32
33 Q. Was the purpose of that attendance so that you could
34 meet with a representative of your insurer?
35 A. Correct. I was meeting with an assessor.
36
37 Q. Do you recall the assessor's name?
38 A. I don't.
39
40 Q. That's all right. Was it the assessor alone or was
41 there going to be someone else attending; do you recall?
42 A. No, it was the assessor alone, and he came out and
43 I took him through.
44
45 Q. So the assessor was a man?
46 A. Yes.
47

1 Q. So this wasn't the person Sue that we've heard some
2 evidence about already; this was a different person?
3 A. No, this was I believe a contractor.
4
5 Q. Could it be Mr Finningham?
6 A. Yes, that's him.
7
8 Q. Okay. And he was there to make an assessment on
9 behalf of your insurer?
10 A. Yes.
11
12 Q. All right. And do you have any particular
13 recollection of any conversations you had with him?
14 A. Yes. So took him through everything. You know, he
15 was extremely helpful and sympathetic, but essentially
16 said, look, this is above his pay grade and he's going to
17 have to escalate it.
18
19 Q. Okay. You stayed at the property for some time after
20 you had met with Mr Finningham?
21 A. Yes.
22
23 Q. And do you recall if the water was still flowing on
24 this day?
25 A. Yes.
26
27 Q. And was it flowing by this point still through the
28 property or had it been diverted and was only flowing under
29 or you can't recall?
30 A. Under.
31
32 Q. Under the property. Thank you. Was the property a
33 mess inside at this point?
34 A. Yes, completely.
35
36 Q. There had been a lot of people through over the last
37 few days?
38 A. Yes.
39
40 Q. Quite a lot of water through the property?
41 A. Yes, for sure.
42
43 Q. Okay. That was Tuesday, the 2nd - sorry, the 7th.
44 You went back to the property the next day, Wednesday, the
45 8th. And I think on that occasion you went with at least
46 Kellie and the kids and perhaps even some others?
47 A. Yes, we did. We put, I guess, a call out to, you

1 know, some people that could help us move some furniture
2 and try to, I guess, do some asset recovery.

3

4 Q. Do you recall if anything in particular had prompted
5 you to decide to go and try and move the furniture and the
6 other items inside the house?

7 A. Unfortunately, yes.

8

9 Q. What was that?

10 A. I rang my insurance on the first night and they
11 indicated to me that I didn't have contents insurance. And
12 to this day we're still waiting on the call recording for
13 that because we're just not sure how that's possible.

14

15 Q. You thought you did have that insurance, did you?

16 A. Of course, yes.

17

18 Q. I see. And so, in any event, you went there to try
19 and take items out of the house?

20 A. Correct.

21

22 Q. Do you recall Kellie speaking to you on that day about
23 posts that she had seen on Facebook?

24 A. Yes.

25

26 Q. And was one of those posts concerned with a pothole on
27 Charlesworth Street?

28 A. Yes, it was.

29

30 Q. Did you think anything about that in particular when
31 you were told?

32 A. Not really. I was sort of getting flooded with
33 information from all different parties and stuff. It was
34 interesting information that I thought should be passed on
35 just on the off chance that Mr Glover or council weren't
36 monitoring the community.

37

38 Q. And did you inform Mr Glover about the fact of those
39 posts?

40 A. I did.

41

42 Q. All right. I might just show that to you. Could
43 I have on the screen, please, RES.0009.0001.0012. This is
44 an exhibit to your witness statement, Mr Moran. Now, it's
45 a little difficult to see but it looks as though you've
46 sent a couple of pictures. And then is the text in blue
47 underneath, is that --

1 A. That's my text.
2
3 Q. That's yours. Okay. And this is a text from you to
4 Mr Glover, is it?
5 A. Correct.
6
7 Q. I see. And you said, "Probably unrelated and you
8 probably hate social media but my wife sent this. See you
9 at 10.30 am tomorrow." And Mr Glover's responded, "Thanks.
10 Can I ask you what street and house number? And yes I do
11 not use socials." Very wise. If we go over the page.
12 You've then sent him a further image?
13 A. Correct.
14
15 Q. And so just explain in general terms why was it you
16 thought this information might be useful to Mr Glover?
17 A. Probably I'm starting to get a picture that there was
18 a lot going on in the community and there was a lot of
19 information that maybe council weren't seeing, and
20 I thought it relevant especially with Mr Glover there.
21 I thought it was relevant to him. We were just trying to
22 help him sort of troubleshoot the issue and maybe the
23 location of the water.
24
25 Q. All right. Thank you. That image can come down,
26 thank you. Was it also on or about 8 January that you and
27 Kellie decided to put some cameras around the property?
28 A. Correct.
29
30 Q. Okay. And what prompted that?
31 A. There was two things that prompted it. We were
32 concerned with neighbours entering the property without our
33 permission, and that was based on an incident that Kellie
34 had a neighbour just literally walk past and was probably
35 going to enter the property. And then the second part of
36 that was a neighbour at 10-12 asking for permission to
37 enter the property to be able to evaluate what went on.
38
39 Q. I see. That was Wednesday, the 8th. You attended the
40 property again the following day, on Thursday, the 9th?
41 A. Yes.
42
43 Q. That was again to meet with somebody from your
44 insurer?
45 A. Correct.
46
47 Q. Do you remember the name of the person you were

1 meeting there?
2 A. Yes, that was Sue.
3
4 Q. That was Sue. All right. And was Sue a more senior
5 assessor?
6 A. She indicated to us that she was as senior as it gets.
7
8 Q. I see. Did she come with somebody else?
9 A. She came with a builder.
10
11 Q. Okay. And they inspected the property?
12 A. They did, and the builder actually went right up the
13 landslide and to the point where he had to - he had a
14 change of clothes in the car that he had to change into, it
15 was that - he had mud up to his knees.
16
17 Q. I see. Was there any discussions that you can recall
18 about the source of the water at this point or was it too
19 early in their assessment?
20 A. It was probably too early in their assessment. They
21 were still sort of saying it could be a spring, it could
22 be, you know - it could be overflow, it could be mains; the
23 sort of all the scenarios keep getting thrown up.
24
25 Q. Do you recall that you provided Sue with some
26 photographs?
27 A. I did, yes.
28
29 Q. Do you recall how you provided them to her?
30 A. I would of texted them to her.
31
32 Q. Okay. Could I have on the screen, please,
33 RES.0009.0001.0013. These are the images that you sent to
34 Sue?
35 A. Yes.
36
37 Q. Okay. And could you just describe the image at the
38 top of the page? That's the rear of the property?
39 A. It is, yes.
40
41 Q. And in terms of the floor plan that is the back of
42 what would be called the second level; is that right?
43 A. Yes, correct. The part that sort of juttred out, the
44 laundry and bathroom.
45
46 Q. I see. And did you take these photographs?
47 A. Yes.

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47

Q. I see. And --

A. I certainly took - I don't know if I took them or it was maybe one of - maybe it was my son or someone with a bit more - a bit more mobile than I am.

Q. I see. Do you recall when these photos were taken? Was it the day that Sue was there or had you taken them earlier?

A. It would have been taken earlier. I'll have a - I'll have a date and time stamp on them.

Q. That's okay. So that's Thursday, 9 January, 9.34 am is the date stamp up the top of the first two photos. Since we're here we might as well step out of the chronology briefly and have a look at the photo below, which is date stamped 11 January. Could you just explain to the chair where on the property this is and why you were taking this photograph?

A. Yes. So this was an indication of the - this was an attempt made by the assessors to redirect the water, so to redirect it from under the house away from the retaining wall. And that is sloped out to Penny Lane. And, you know, my car is just seen in the background there. And that's the - and behind that is the temporary fencing that we were talking about earlier.

Q. So, this water that you can see in this photograph, this is water that's been diverted and is now flowing that way and out onto the street, is it?

A. It was. It was. But there had been that much - that much soil and debris that came down with it that it had clogged up.

Q. I see.

A. So that's just - that's the remnants of where it was going.

Q. I see. Thank you. That document can come down, please. Do you recall that on the same day that you met with Sue at the property Mr Glover also came to the property?

A. Yes.

Q. Okay. And do you recall whether Sue was still present when Mr Glover arrived?

A. Correct.

1
2 Q. Okay. And so there's Sue and a builder are there
3 together with you and Mr Glover. And did Mr Glover arrive
4 with others as well, so far as you can recall?
5 A. I think he had a couple of trainees or apprentices
6 with him.
7
8 Q. I see. Had he told you that he was coming around that
9 day?
10 A. Yes.
11
12 Q. Okay. So it wasn't a surprise?
13 A. No.
14
15 Q. And did Mr Glover hand you a document when he arrived?
16 A. He did.
17
18 Q. Okay. And what was that document in general terms?
19 A. In general terms it was a list of recommendations that
20 Mr Glover and Mr Pope had put together as to what needed to
21 be done by the three properties in order to, I guess, make
22 them safe.
23
24 Q. Okay. Now, Kellie was there at the time, wasn't she?
25 A. She was.
26
27 Q. And did you and Kellie read the report when it was
28 handed to you or did you wait until later in the day?
29 A. No, we sort of got taken through the report.
30
31 Q. Okay. I'll put the report on screen. It's
32 RES.0009.0001.0005. This is also an exhibit to your
33 witness statement, Mr Moran. This is the document you were
34 handed by Mr Glover?
35 A. Correct.
36
37 Q. Okay. And did he explain to you what this document
38 was?
39 A. He did.
40
41 Q. Okay. And so far as you can recall what did he tell
42 you it was?
43 A. It was primarily around redirecting the water as a
44 primary objective; and then the secondary part was how to
45 remove the debris from where it was because they were
46 concerned that more debris will cause some damage; and the
47 third part was the introduction of a couple of 40-foot

1 containers or shipping containers that would be essentially
2 filled with water to act as a bit of a ballast for the
3 bottom retaining wall.
4

5 Q. Okay. Did you notice when you read it that there was
6 a mention on the first page there, it's the third
7 paragraph, of a preliminary risk assessment?

8 A. Yes.
9

10 Q. And you understood from that that the council's
11 geotechnical engineer had assessed your property as being
12 an unacceptable risk to life?

13 A. Correct.
14

15 Q. Okay. And did you understand what P3 was, the third
16 property that's mentioned in the report?

17 A. Yes, well, P3 was the property in front.
18

19 Q. Okay.

20 A. The Willigenburgs.
21

22 Q. Yes. So this was a list of action items that needed
23 to be done in order to make your property safe?

24 A. Yes.
25

26 Q. And you understood that you were required to cause
27 these action items to be effected?

28 A. Yes.
29

30 Q. Okay. That can be just returned to the front page,
31 thank you. Did you discuss these items with Mr Glover?

32 A. We did. Part of our concern was that we didn't fully
33 understand, I guess, the engineering behind it.
34

35 Q. What do you mean by that?

36 A. We just didn't have the expertise to fully understand
37 exactly what they were trying to achieve.
38

39 Q. Okay.

40 A. And Sue, the assessor, certainly took over.
41

42 Q. I see. Do you recall discussion regarding the
43 possible use of shipping containers?

44 A. Yes.
45

46 Q. Now, just explain to us what that proposal was so far
47 as you understood it?

1 A. Yes. So, as far as I understand, it was putting two
2 shipping containers down at the front retaining wall of our
3 property, putting them in, filling them with water, and put
4 them on an angle to act as a bit of a ballast so that the
5 water that was building up behind the retaining wall
6 wouldn't actually collapse and potentially damage the
7 property in front.
8

9 Q. Just so I can understand your mind set at this point
10 in time, when you were handed this report which speaks of
11 things like the use of shipping containers in the front
12 yard to reinforce the retaining wall did you think that at
13 this point in time ultimately you would be able to have
14 these works performed, have the water source identified and
15 the house would eventually return to normal?
16

17 A. Spot on.

18 Q. Okay. But you would have understood that it was going
19 to take days, weeks, perhaps months before a return to
20 normalcy?

21 A. Probably. I wasn't really thinking at that stage. It
22 was all just happening and we just - you know, we were
23 thankful that we had, I guess, insurance. And they assured
24 us they were just going to take care of it. So we were
25 pretty comfortable that it would all just follow a course
26 and we'd be back in our house.
27

28 Q. Okay. Now, the conversations that you had with
29 Mr Glover concerning this document, was Sue involved with
30 those as well?

31 A. She was.
32

33 Q. Okay. And is that where the disagreement between the
34 possible use of the shipping containers became apparent?

35 A. Probably not at that exact time, but I know that our
36 insurers were - you know, as far as we were concerned what
37 had to be done had to be done. But our insurers were
38 concerned at the logistics of getting a couple of shipping
39 containers in to such a tight property and that it would
40 do - even if it was possible, it would do a huge amount of
41 damage to neighbouring properties.
42

43 Q. All right. I might just next show you a paragraph in
44 your witness statement, which is RES.0009.0001.0002, and if
45 we could go to 0011 of that document, please, which is
46 paragraph 55. If 55 could be expanded, please. I just
47 want to ask you about this statement - this part of your

1 statement, Mr Moran. You say that the builder who
2 accompanied Ms Gaylard - that's the person we've been
3 calling Sue; is that correct?

4 A. Correct.

5

6 Q. Commenting that the property was well built, but the
7 footings under the ensuite to the master bedroom appeared
8 to have been sheared off during the 5 January landslide.
9 We'll come to the next sentence in a minute but, first,
10 what did you understand him to mean by the statement that
11 the footings had been sheared off?

12 A. She was very concerned with that little portion of
13 the house and the stability of it in that area.

14

15 Q. Okay. You say then that you didn't understand the
16 importance of the statement at the time. Did that
17 statement come to seem significant to you later?

18 A. When the house fell, yes, for sure.

19

20 Q. Thank you. That can be taken down. Do you recall
21 being contacted by Mr Glover later in the day about your
22 neighbour from 10-12 View Point Road having access to your
23 property?

24 A. Yes.

25

26 Q. Okay. Why was it, so far as you understood it, that
27 that neighbour wished to have access to your property?

28 A. I believe he had some geotechs or some engineers that
29 he wanted to get access to our property to better
30 investigate the cause.

31

32 Q. I see. And did Mr Glover have a view about whether or
33 not access ought be provided?

34 A. He didn't have a view, no. He had no issues,
35 I believe, with that.

36

37 Q. Okay. And did you have a view about whether or not
38 you would provide access?

39 A. I sought advice from our assessors, and they had
40 concerns about the liability, I think, I believe, of having
41 someone on the property, someone external on the property.
42 So via text message I declined that.

43

44 Q. I see. That was Thursday, 9 January, Mr Moran. You
45 went to the property again the next day, Friday, the 10th,
46 and you again met Mr Glover on that day. Do you remember
47 whether Sue also came on that day?

1 A. I don't believe so.
2
3 Q. Do you remember whether perhaps some leak detection
4 people came on that day?
5 A. That's right. Yes.
6
7 Q. Do you remember that?
8 A. Yes, I do.
9
10 Q. And did they come with Sue?
11 A. They did.
12
13 Q. I see. What was the purpose of the insurer's assessor
14 attending at the property on that day?
15 A. From conversations I had later, I think they had
16 doubts that it was a natural spring and they wanted to do
17 some verification themselves.
18
19 Q. Had you been advised by Mr Glover that he had put
20 together a water diversion plan?
21 A. Yes.
22
23 Q. I see. Was that perhaps the day before?
24 A. It was.
25
26 Q. I see. And was your insurer advised about that?
27 A. Yes. And they had spoken and they got together with -
28 for a plan, plan of attack, and they - what they wanted to
29 do was to take it away from the retaining wall, to take the
30 pressure - you know, the amount of water that was coming
31 down was significant. So they wanted to remove the
32 pressure from the back of the retaining wall.
33
34 Q. This involved installing some pipes?
35 A. It did, yes, ripping up the front deck, installing
36 some pipes, redirecting the water or channelling the water
37 into the pipes and down into the main Penny Lane drain.
38
39 Q. I see. You received a telephone call from Ms Gaylard
40 a little later that day after you had left the property?
41 A. Yes.
42
43 Q. And do you recall her explaining to you that she had
44 her doubts about the source of the water?
45 A. Correct.
46
47 Q. Okay. And, in general terms, what was her view?

1 A. Her view was that it was coming out of a pipe under a
2 retaining wall further up the landslide.
3
4 Q. Okay. Did you ever see a photograph of that pipe?
5 A. No. She said she did take some, though.
6
7 Q. Okay. That was the Friday. You attended again at the
8 property the next day, Saturday, the 11th?
9 A. Correct.
10
11 Q. And that was the day that you noticed that there was
12 property that was breaching the retaining wall at the front
13 of the property; is that right?
14 A. Correct, yes. So that photo that we just saw before
15 was, I guess, where the water was meant to be coming out
16 of. But it had stopped working and it had returned to
17 breaching the front of the property.
18
19 Q. And did you advise Ms Gaylard of that fact?
20 A. I did, yes.
21
22 Q. And what did she say?
23 A. Being a Saturday morning she wasn't able to get her
24 contractors back out there straightaway, but she'll get on
25 to it Monday morning.
26
27 Q. All right. Could I have on the screen, please,
28 RES.0009.0001.0007. So this is you texting Sue, and this
29 is a similar photo to the one we saw earlier save that we
30 can see here a pipe?
31 A. Correct.
32
33 Q. Okay. And so that's a pipe that had been installed to
34 try and divert the water underneath the house?
35 A. Yes. The photo we saw before I think was just cut off
36 on the bottom of the screen, but that's the same photo.
37
38 Q. I see. And so there you can see where the water's
39 supposed to be coming out of the pipe?
40 A. Yes.
41
42 Q. But at the time you took this photo there's no water
43 coming out?
44 A. No. It had all sort of clogged up with sand and
45 debris or whatever the material was.
46
47 Q. Could you tell where the water was going or was that

1 not apparent?

2 A. It was literally going the same way it had started,
3 which was, you know, again, channelling literally to the
4 front of the property and over the retaining wall.

5

6 Q. I see. I'll come back to that particular day in a
7 minute.

8 A. No worries.

9

10 Q. But let's try and finish up the immediate chronology.
11 You say in your witness statement that on the Monday,
12 13 January, you messaged Mr Glover asking for an update
13 about the source of the water?

14 A. Correct.

15

16 Q. Do you remember doing that?

17 A. Yes.

18

19 Q. Okay. And do you recall that Mr Glover called you
20 back?

21 A. Yes.

22

23 Q. And what did he tell you in general terms?

24 A. He was still investigating.

25

26 Q. Okay. And at this point in time was the shipping
27 container idea still a live idea?

28 A. It was a live discussion with - I tried to bridge the
29 gap, I guess, between Mr Glover and Sue, the assessor, and
30 tried to put them in touch with each other to discuss it.
31 But it was definitely a live idea.

32

33 Q. Okay. At this point in time was it the case that
34 Mr Glover still thought the water source was a natural
35 spring and Sue thought it was a broken pipe?

36 A. As far as we were concerned, yes. However, it seemed
37 like that everyone was still throwing up a whole bunch of
38 options.

39

40 Q. I see.

41 A. No one was very - the assessor was probably the most
42 definitive about their opinion, whereas Mr Glover was very
43 much, you know, "These are the options."

44

45 Q. So as far as you understood it on 13 January, that's
46 the Monday, the flow of water was essentially the same as
47 it had been since the date of the slide?

1 A. It hadn't changed, yes.

2

3 Q. Okay. Now, you say in your witness statement - I'm
4 sorry to take you slightly out of sequence, but we were
5 talking before about the Saturday, the 11th, which was when
6 you had sent these text messages. Do you recall you also
7 took a video of some water on that day?

8 A. I did.

9

10 Q. All right. I'll just show that to you. It's
11 RES.0009.0001.0008. And if you could just perhaps explain
12 what it is that we're seeing in this footage?

13 A. This is just - yes, this is the photo of where it was
14 meant to have come out, but it had obviously stopped
15 flowing. And they're the temporary boards where they sort
16 of cut through.

17

18 Q. All right. We might take that down. Thank you.

19 A. I do have the other video of the other side.

20

21 Q. Yes, I think it's there, but it just decided to turn
22 itself onto super slow mo. So we'll look at it in our own
23 time. All right. So we've done Saturday, the 11th, which
24 was that date. You've just described your conversation
25 with Mr Glover on the following Monday, the 13th. That
26 gets us to Tuesday, the 14th, which is the fateful day.
27 How did you hear of the fact of the second landslide?

28 A. I was contacted by a mate just on text message who
29 is - he was a volunteer through I think fire or SES.

30

31 Q. Right. This is a friend of yours, did you say?

32 A. Yes. And he had been to the house previously and knew
33 where the house was, and alerted me to the fact that he
34 thought we had a landslide, and I replied to him and said,
35 "No, that was over a week ago." And he said, "No, no, no,
36 the whole house has come down."

37

38 Q. Did you then try and ascertain whether or not that was
39 in fact the case?

40 A. Correct.

41

42 Q. And how did you do that?

43 A. A variety of ways. I tried to ring Mr Glover.
44 I tried to ring Paul Willigenburg. I tried to ring the
45 assessor. And I eventually turned on the radio.

46

47 Q. And while listening to the radio did you hear news of

1 the landslide?

2 A. I did. And I had received messages in the meantime
3 from my brother and other people.
4

5 Q. So what did you do then?

6 A. I contacted Kellie, and she came back to where she
7 was, she came back to the house, and I eventually got hold
8 of Mr Willigenburg and I said, "What's happened?" And he
9 said, "The whole thing's come down."

10

11 Q. You decided then to travel to the property, did you?

12 A. We did.
13

14 Q. Were you confident that there was nobody in the house
15 at the time?

16 A. I'd heard from Mr Willigenburg that he had pulled -
17 him and his wife had pulled Mr Glover out when it came
18 down, he was there, because I was - I knew that he was
19 going to the house at 8.30. So I knew he was there. And
20 the fact that he wasn't answering his phone was probably -
21 was concerning for us as well. And, yes. And I heard that
22 he had some decent injuries.
23

24 Q. You heard that from Mr Willigenburg, did you?

25 A. I did.
26

27 Q. Okay. And did Mr Willigenburg tell you whether or not
28 an ambulance had been called for Mr Glover?

29 A. He said they were with him at the time.
30

31 Q. Thank you. You drove then to McCrae?

32 A. Yes.
33

34 Q. Telephone calls and messages on the way, no doubt,
35 from friends and family?

36 A. Friends and family. And we were just - you know, it
37 was almost - yes, it was a horrible drive.
38

39 Q. When you arrived at McCrae the road was closed

40 A. Yes.
41

42 Q. But you managed to get through via the intervention of
43 Mr Daw?

44 A. Eventually, yes.
45

46 Q. And what did you see when you arrived at the property?

47 A. It was - yes, it was horrible. I had concerns.

1 I knew the assessors were having contractors there at
2 different times and, with people coming and going, I had
3 concerns there might have been some other people that they
4 didn't know were at the property. We pretty much cleared
5 that and found out there wasn't. And then we just - yes,
6 it was just - yes, it was horrific.

7

8 Q. Do you recall speaking with the Willigenburgs while
9 you were there?

10 A. Yes, we spent a fair bit of time with them.

11

12 Q. Okay. And did they tell you anything about what they
13 had observed or heard?

14 A. We didn't try to take them - we were just - we were
15 there trying to comfort them and didn't want to ask them
16 too much about what they endured that morning.

17

18 Q. Were they visibly upset?

19 A. Yes.

20

21 Q. Did you see Mr Glover or was he gone by this point?

22 A. No, he was gone by then.

23

24 Q. Okay. Mr Moran, thank you for your evidence. They
25 are the matters that I wanted to address with you. But,
26 before you leave the witness box, is there anything else
27 that you would like to convey to the chair?

28 A. Yes, I guess, to echo Kellie, we're really
29 appreciative of this inquiry. This is - we're a pretty
30 resilient family, but this has broken us. And my wife's
31 one of the strongest people you can come across, and she's
32 still not sleeping and she's pretty broken by this. So,
33 you know, it just - it's just a fluke that it hasn't taken
34 out my whole family and we weren't there that day. But,
35 you know, as an overall we're just really thankful that
36 we're going to get some answers.

37

38 MR COSTELLO: Thank you, Mr Moran.

39

40 CHAIRPERSON: Thank you for coming, Mr Moran. Thank you
41 for your helpful evidence. Are there any questions? There
42 are no questions. So that completes your evidence. Thank
43 you.

44 A. Thank you.

45

46 <THE WITNESS WITHDREW

47

1 MR COSTELLO: Chair, I'm none out of three for picking the
2 right time to adjourn for the lunch break. Were you hoping
3 to adjourn now or would you like to start the next witness?
4

5 CHAIRPERSON: What time do we usually resume after lunch?
6 Is it 2 or 2.15?
7

8 MR COSTELLO: 2.15 ordinarily.
9

10 CHAIRPERSON: Why don't we break now for lunch and resume
11 at 2, unless that causes anyone inconvenience? No. Let's
12 do that.
13

14 MR COSTELLO: Thank you.
15

16 **LUNCHEON ADJOURNMENT**

17
18 **UPON RESUMING AT 2.01 PM:**
19

20 CHAIRPERSON: Mr Di Stefano.
21

22 MR DI STEFANO: Madam Chair, the next witness is Mr Brett
23 Phillips Cooper, who I call.
24

25 CHAIRPERSON: Is Mr Cooper in court?
26

27 MR DI STEFANO: Yes. If you could take the witness box,
28 Mr Cooper, please.
29

30 **<BRETT PHILLIPS COOPER, affirmed:**
31

32 **<EXAMINED BY MR DI STEFANO:**
33

34 CHAIRPERSON: Mr Di Stefano, who is one of the counsel
35 assisting the inquiry, will have some questions for you,
36 and others may have questions after Mr Di Stefano finishes.
37

38 MR DI STEFANO: Thank you, Mr Cooper. If you could please
39 state again for the transcript your full name?

40 A. My full name is Brett Phillips Cooper.
41

42 Q. And you live at an address known to the inquiry?

43 A. It's 5 Waller Place, McCrae.
44

45 Q. Yes. And what's your occupation?

46 A. I'm a mechanical contractor.
47

1 Q. Yes. Thank you. And you have a statement prepared
2 for you in the inquiry?
3 A. I do.
4
5 Q. Can a copy of that statement please be given to
6 Mr Cooper.
7 A. I have it.
8
9 Q. He has it. Thank you. Are you happy to sign that
10 statement as a true and correct recollection of your events
11 and to be your evidence in the inquiry?
12 A. I am.
13
14 Q. Thank you. Well, if you could please do that now.
15 There's a pen just next to the microphone cable, thanks.
16 Thank you. I tender that statement and its exhibits, Madam
17 Chair.
18
19 CHAIRPERSON: Thanks, Mr Di Stefano. The statement of
20 Brett Cooper and the documents referred to therein will be
21 exhibit CA17.
22
23 **EXHIBIT #CA17 STATEMENT OF BRETT COOPER AND THE DOCUMENTS**
24 **REFERRED TO THEREIN.**
25
26 MR DI STEFANO: Mr Cooper, you're attending today pursuant
27 to a notice to attend dated 7 May; is that correct?
28 A. That's correct.
29
30 Q. Thank you. So, Mr Cooper, you currently reside at
31 5 Waller Place, McCrae?
32 A. Correct.
33
34 Q. How long have you lived there for?
35 A. Seventeen years.
36
37 Q. And did you live in the McCrae area prior to that?
38 A. No.
39
40 Q. If I can have the map brought up, please, which is at
41 page 6 of document MSC.5016.0001.1844. This is one of
42 Mr Pope's documents. Are you able to identify where on
43 this map 5 Waller Place is?
44 A. Yes. It's not the world's clearest map.
45
46 Q. Perhaps if you can zoom in on the bottom right?
47 A. How do I do that?

1
2 Q. Sorry, the operator, please.
3 A. Right there. Excuse me while I point. My house --
4
5 Q. Maybe I'll describe it. So where NDT12 is on that
6 map, can you see that?
7 A. Yes.
8
9 Q. Where is your house in relation to that?
10 A. Here.
11
12 Q. Yes. Thank you.
13 A. Right there.
14
15 Q. Thank you. And that's the house, 5 Waller Place,
16 you've lived at for 17 years?
17 A. Correct.
18
19 Q. And you regularly drive to and from Waller Place; is
20 that right?
21 A. Yep, multiple times a day generally.
22
23 Q. Yes. And do you typically go down Charlesworth Street
24 and onto Coburn Avenue?
25 A. It's the only way in and out of that area, so yes.
26
27 Q. Thank you. In November, early November or
28 mid-November, did you notice anything different on
29 Coburn Avenue, Charlesworth Street or Waller Place?
30 A. Primarily Charlesworth Street. The road started to
31 basically crack and lift up, and water started to leak out
32 of it.
33
34 Q. Yes. And when approximately did you first notice
35 that?
36 A. That was definitely in November, mid-November.
37
38 Q. Mid-November. And where specifically on
39 Charlesworth Street do you recall the cracks and the water?
40 A. Okay. So where Waller Place and Charlesworth Street
41 meet, it was just - if you live in my house - to the right
42 of it.
43
44 Q. So a bit uphill?
45 A. Slightly, yeah.
46
47 Q. Uphill on Charlesworth Street?

1 A. Yep, slightly.

2

3 Q. Yes. And you said water. Do you have an estimate of
4 how much water - when you first noticed it, how much water
5 approximately was coming out of the cracks?

6 A. A trickle. It wasn't huge but a trickle.

7

8 Q. Yes. And that was in mid-December, was it?

9 A. November.

10

11 Q. Mid-November, sorry. Correct. And did it seem to
12 change at all over the course of December - sorry,
13 November?

14 A. It steadily increased.

15

16 Q. The amount of water?

17 A. Yep.

18

19 Q. And did that continue into December?

20 A. It certainly did.

21

22 Q. To the best of your recollection, was there any rain
23 around that time?

24 A. Nothing of any significance.

25

26 Q. Yes. In that November period or late November did you
27 notice any other cracks, or was it just at the corner of
28 Charlesworth and Waller Place?

29 A. It was mainly just there at Charlesworth and Waller
30 Place.

31

32 Q. Yes. So when you say "mainly" do you mean you did
33 notice something somewhere else or that you --

34 A. That - well, I'm going to say at Charlesworth.

35

36 Q. Yes. Thank you. That's the leak that in your
37 statement you've referred to as the first leak; is that
38 correct?

39 A. Yeah, that's leak 1.

40

41 Q. Leak 1. Leak 1, not week 1?

42 A. Yeah.

43

44 Q. And do you recall when that was repaired, if it was
45 repaired?

46 A. It was definitely repaired on 11 December, if I recall
47 that date right, I think.

1
2 Q. And what is it that you saw to make you --
3 A. I was driving back from the dentist with my daughter -
4 that's how I can confirm the date - and someone had come
5 along and basically scooped out the damaged asphalt, with a
6 spade more than likely, and just put more asphalt into the
7 hole like you were patching a pothole, and that was that.
8
9 Q. Yes. And do you recall if there was still moisture
10 around?
11 A. At that point that sort of capped the leak for a few
12 days.
13
14 Q. Yes. And do you happen to know who it was that
15 performed that repair? Did you see them performing the
16 repair?
17 A. They were still there. I don't know who they were.
18 I was assuming it was the council.
19
20 Q. Yes. And so after that, which you said was on the
21 11th, when did you next notice water or cracking?
22 A. Probably about a week.
23
24 Q. And where was that?
25 A. Same place.
26
27 Q. So where the - was it the exact same place that had
28 been repaired?
29 A. Exact same place.
30
31 Q. And what exactly did you notice?
32 A. Same. The repair had lifted up, water was coming out
33 of the ground at an increased rate at this point.
34
35 Q. So increased respective to what it was when you
36 previously observed it?
37 A. Yeah.
38
39 Q. And as you would drive to and from your home I assume
40 you would drive over that spot or near that spot?
41 A. Well, I'd drive to the left. So as I drove around
42 it's immediately to the left.
43
44 Q. So you're in the driver's seat?
45 A. Sorry, the right.
46
47 Q. The right-hand side of the car?

1 A. Yeah.
2
3 Q. You go to the end of Waller Place and you turn left
4 and you could see it there on your right?
5 A. Yeah, on the right.
6
7 Q. I assume then you would be seeing that crack and the
8 water almost every day?
9 A. Yep. As you drive up Charlesworth Street you're
10 looking directly at it
11
12 Q. Yes. And did you notice when it re-emerged that it
13 got worse?
14 A. Yes.
15
16 Q. And - I mean, it's difficult to give an estimate of a
17 particular volume, but did it look like someone, for
18 example, had a hose on the road or was it more of a
19 trickle?
20 A. It was an increasing trickle at that point.
21
22 Q. And did you notice any other areas where there was
23 water, unexplained water, as far as you were aware in that
24 period from 11 December onwards?
25 A. Yes. Yep. From then it started coming out of
26 the nature strip of number 34 Coburn Avenue.
27
28 Q. Yes. So are you able to identify on the map perhaps
29 by reference to the notations roughly where that leak was?
30 A. About H01.
31
32 Q. Yes. So that's the corner of Charlesworth and Coburn?
33 A. Correct.
34
35 Q. And when did you notice - this is what you refer to as
36 the second leak in your statement?
37 A. Yes, this is the second leak.
38
39 Q. When did you notice the second leak start?
40 A. Quickly after the re-emergence of the first leak.
41
42 Q. So would you say within a few days --
43 A. Yes.
44
45 Q. -- or within a week?
46 A. Days.
47

1 Q. So some time then between 15 December, thereabouts?
2 A. Yes.
3
4 Q. Can you describe what you observed with the second
5 leak?
6 A. It just - their nature strip became soaked, and a
7 broader sort of line of water started just weeping over the
8 edge of the gutter into the gutter. So it just sort of
9 spread wide and - yeah, it's like - just hard to really
10 paint the picture.
11
12 Q. Yeah, no, no, you're painting the picture.
13 A. But it wasn't like a hose running in just one spot.
14 The whole nature strip was wet and it was like it brimmed
15 up and was now starting to flow over probably a metre-wide
16 area into the gutter.
17
18 Q. Could you actually see the water flowing and bubbling
19 over or was it drenched?
20 A. It was - the nature strip was drenched and the
21 concrete was, like, shiny, the gutter was shiny from the
22 water on it.
23
24 Q. Yes. So there was visible --
25 A. At that stage it wasn't fully - it wasn't like you'd
26 go up there and see it flowing like a river, but you could
27 see it was --
28
29 Q. Visible surface water, yeah.
30 A. -- visibly wet surface water.
31
32 Q. And did that change at all over the time you observed
33 it?
34 A. Yep, got worse.
35
36 Q. Yes. And could you describe what the condition of
37 the nature trip was? I assume you're talking about - you
38 said 34 Coburn Avenue?
39 A. Yeah.
40
41 Q. Which is at the corner there. Is that the nature
42 strip you're referring to?
43 A. Yep, right on the corner.
44
45 Q. And can you describe what the condition of the nature
46 strip was?
47 A. It was - it was a quagmire, close to.

1
2 Q. Yes. So if you stepped on it what would happen?
3 A. You couldn't step on it.
4
5 Q. Yes. And around that time were you - did you see any
6 personnel attempting to repair either the second leak or
7 the re-emergence of the first leak?
8 A. We also had the third leak.
9
10 Q. Yes. If you want to talk about the third leak, let's
11 talk about that. So where was that on the map, if you can
12 define it?
13 A. So that was - the third leak was two houses up from
14 where my house is.
15
16 Q. So if we can zoom in again on - if we can tick a box
17 between where it says Waller Place and Charlesworth Street.
18 Sorry, no, capturing Charlesworth Street and Waller - the
19 word "Charlesworth Street", capturing that word, and Waller
20 Place. Yes, that will be good.
21 A. Where that says NDT12 --
22
23 Q. Yes?
24 A. -- I believe that would be about the spot.
25
26 Q. So where the word - where the letters NDT12 are?
27 A. Yes.
28
29 Q. As that map hopefully loads, that was the location of
30 the third leak?
31 A. Yes.
32
33 Q. Are you able to describe what you describe as the
34 third leak?
35 A. It was very similar nature to the second leak, as in
36 the water was welling up in the nature strip.
37
38 Q. Yes.
39 A. Completely soaked. It was flowing across the road
40 into the drain out the front of number 4 Waller Place.
41
42 Q. Yes. In terms of volume, did it have a similar
43 appearance to that that was the second leak at the corner
44 of Coburn and Charlesworth?
45 A. Yes, very similar, if not greater, in fact.
46
47 Q. More, a higher flow of water?

1 A. Mmm.
2
3 Q. And which of those two, if you can recall - so my
4 understanding of your evidence, tell me if this is correct,
5 that the first leak emerged in November?
6 A. Yep.
7
8 Q. It was then capped?
9 A. Yep.
10
11 Q. And then re-emerged later?
12 A. Yep, correct.
13
14 Q. When relative to that re-emergence of the first leak
15 did the second and third leaks emerge?
16 A. All very close together.
17
18 Q. So can you recall which came first?
19 A. Yep, the 34 Coburn Avenue, the second leak, and then
20 followed by the third leak at number 1 Waller Place.
21
22 Q. Okay. So a moment ago I think you said that the
23 second leak was approximately 15 December?
24 A. Yes.
25
26 Q. Or thereabouts, give or take. But do you have any
27 recollection of how many days or weeks after that the third
28 leak emerged?
29 A. It was last. Probably a week and a half.
30
31 Q. A week and a half later.
32 A. Yep.
33
34 Q. Okay.
35 A. It was definitely last.
36
37 Q. So approximately some time in the week of 20 December?
38 A. Yeah.
39
40 Q. Thank you. Around that time did you notice anything
41 else unusual in terms of water flow?
42 A. All of that was unusual, and we also had running
43 through the stormwater drain that runs down the side of my
44 house into Waller Place a very - extremely significant
45 amount of water flowing through it.
46
47 Q. Yes. So the map - if we can have the zoomed out of

1 the map again and to zoom in on - where it says ND12, if
2 that could be the top of the box and if it could run down
3 to the bottom of the - yes, that's good, yes. Sorry,
4 Chair, the resolution of the map on the screen is not quite
5 how it is on my iPad. So your property you identified a
6 moment ago is the one that's just to the --

7 A. My property is here.

8
9 Q. Yes. So, for the transcript, just below the orange
10 circle at ND12. And can you identify where the sounds were
11 coming from that you were talking about?

12 A. So in the street, very clearly.

13
14 Q. Yes. So was it coming from a particular location?

15 A. Yep. So in Waller Place the stormwater pit's directly
16 in front of my property.

17
18 Q. Yes.

19 A. And it was coming out of there.

20
21 Q. Yes. And anywhere else?

22 A. And behind my property, right there --

23
24 Q. Yes.

25 A. -- is an open pit, and you can hear it there too.

26
27 Q. Sorry, just for the transcript, that's between the
28 rear of your property and the freeway?

29 A. The freeway, yeah.

30
31 Q. And when you say an open pit what do you mean by that?

32 A. It's a grated pit. Looks like it's been designed to
33 catch freeway runoff.

34
35 Q. Yes. And can you describe what you could hear in that
36 pit?

37 A. Well, the one on the street was very clear, absolutely
38 rushing water, like, really rushing water, and the one at
39 the back of the property was a much more muffled, because
40 it's been overgrown with vegetation, but you could still
41 easily hear it.

42
43 Q. And did you perceive there to be any difference in the
44 amount of - the sound of the amount of water between those
45 two pits?

46 A. Absolutely.

1 Q. Do you want to explain that?
2 A. Not so much. So they're both connected. So what's
3 going through one has to go through the other.
4
5 Q. Yes.
6 A. But I was more referring to then as in it's completely
7 out of character.
8
9 Q. So in the 17 years that you've lived there had you
10 heard a sound as loud as that from the pit before, from
11 either of those pits?
12 A. Yes, but not when it hasn't been raining.
13
14 Q. So when would you typically hear a sound as loud as
15 that?
16 A. When you have had something probably in the order of
17 25mm of rain in half an hour, something like that.
18
19 Q. Yes, yes.
20 A. Like a significant rain event.
21
22 Q. Significant rain event; that was a similar sound?
23 A. Yep.
24
25 Q. And do you recall when you first started hearing the
26 sound in the pits?
27 A. That was definitely - I'm trying to remember. Be
28 early December, possibly earlier.
29
30 Q. And can you recall did the sound change at all?
31 A. It's just getting worse. It got louder and louder.
32
33 Q. Yes. So did you ever have a look into the pit, for
34 example, the one on Waller Place out the front of your
35 house?
36 A. I did.
37
38 Q. And could you see flowing water?
39 A. You certainly could.
40
41 Q. And did you look into it from time to time or just
42 once or twice?
43 A. From time to time.
44
45 Q. And would you - could you visibly see a change as you
46 would look into it in terms of the volume of water that was
47 flowing through the pit?

1 A. Yes, you could see it visually increasing.
2
3 Q. Yes.
4 A. At this time there were people in the street looking
5 for the source of these leaks.
6
7 Q. When you say "at this time", which time are you
8 referring?
9 A. When I was looking in, when I was investigating it
10 myself.
11
12 Q. Yes. Which was in? When was that?
13 A. December.
14
15 Q. Yes. So did you interact with the people who you
16 would see and infer were investigating?
17 A. I did.
18
19 Q. And did you know where those people were from?
20 A. They were from the council and South East Water, and
21 they also had independent leak detecting contractors with
22 them.
23
24 Q. And what did you tell those people?
25 A. I told them in regards to that stormwater drain that
26 it isn't unusual for water to flow through it but what is
27 really unusual is for this time of the year it should have
28 been nearly stopped and been a trickle at best, and this
29 was seriously out of character.
30
31 Q. And can you recall specifically when you had that
32 conversation or did you have that multiple times with
33 multiple people?
34 A. Multiple times.
35
36 Q. So did you tell each time you spoke to someone from
37 South East Water or the shire or one of their independent
38 contractors?
39 A. So at that time I mentioned it to the shire, I got
40 some from the shire and South East Water contractors.
41
42 Q. Yes. And when was this? In December?
43 A. It's hard to put a time on it because we were out on
44 the street talking to these people almost daily.
45
46 Q. Yes, okay. And can you remember a particular
47 conversation that you had on 24 December, on Christmas Eve?

1 A. Yes, I can remember this clearly.
2
3 Q. So were you speaking with representatives of the shire
4 or South East Water?
5 A. South East Water.
6
7 Q. And can you recall what it is that you said to them?
8 A. So what happened is I - at the back of my property
9 there is a large service pit for a massive stormwater
10 main - sorry, a potable water main, like a pressure main,
11 and I was concerned that this could be the source of
12 the leak. So I got them to come up and inspect this pit,
13 and they pulled the lid up and had a look at it. They
14 tested it with their acoustic sounding and said that the
15 pipe appeared to be fine. I then - I then - we talked
16 about the water in the street, which we had done before.
17 We talked about it again and said, "There's a pit here.
18 You can hear it."
19
20 Q. Sorry, which pit are you referring to then?
21 A. The pit at the back of my property.
22
23 Q. So are you referring to the stormwater pit or the --
24 A. That one, the stormwater.
25
26 Q. Okay. So they've inspected the water main pit?
27 A. Yep, the main water was fine.
28
29 Q. And you've noticed them do a leak detection; is that
30 right?
31 A. They did acoustic sounding.
32
33 Q. Acoustic sounding, okay.
34 A. Which was meant to tell them whether it's leaking or
35 not at that point.
36
37 Q. Yes, yes. And then after that you directed them to
38 the stormwater pit?
39 A. Correct.
40
41 Q. And at that time was there an audible sound from the
42 stormwater pit?
43 A. There was.
44
45 Q. Yes. And did you talk to them about it?
46 A. I did.
47

1 Q. And what did you say?
2 A. I said that that's - well, I already said it was
3 unusual, but the source of that - they said - they openly
4 admitted that they need to find out where that's coming
5 from.
6
7 Q. Yes.
8 A. And I explained to them that before the freeway was
9 built there was a valley that ran between my house and the
10 neighbours that carried a creek, the creek was piped, and
11 the openings to this pipe was in the Boulevard Reserve, and
12 the most logical place to find where that water was coming
13 from is from that vicinity.
14
15 Q. Yes. So if we could have the map - the zoom-out on
16 the map again, please, full view. So are you able to
17 identify where on this map or describe where on this map
18 you're talking about?
19 A. It's off the screen.
20
21 Q. So at the bottom right-hand corner you can see NDT13?
22 A. Oh, there it is, yes.
23
24 Q. And to the south that says Bayview Road?
25 A. Yep, yep. Yes, there.
26
27 Q. And the Boulevard Reserve is?
28 A. Is off the screen.
29
30 Q. Off screen but in that direction from your house?
31 A. Yep, yep.
32
33 Q. And did they say they would investigate, or how did
34 they respond to you telling them about this?
35 A. They said they needed to go over there and look at it.
36
37 Q. Yes. And in go over to the Boulevard Reserve?
38 A. Yep.
39
40 Q. And was that the end of your interaction with them on
41 that day?
42 A. Yes, I believe so. They left.
43
44 Q. Do you have any knowledge of whether they attended, or
45 did you speak to them again that day?
46 A. No, I didn't speak to them again. I - yes. No,
47 I didn't speak to them again.

1
2 Q. And following that conversation did you make any
3 further enquiries yourself?
4 A. The next day?
5
6 Q. Yes.
7 A. The next day, after I'd thought about this more,
8 thinking this is starting it look really, really odd,
9 I walked around to the Boulevard Reserve myself - this is
10 Christmas Day - and I walked into - it was obvious
11 straightaway at the actual pipe opening there was nothing
12 going on. There --
13
14 Q. Sorry, just if I can stop you there. When you say
15 "the pipe opening" what are you referring to?
16 A. It's hard to explain this here, but in the - the
17 Boulevard Reserve was originally one piece of land. It's
18 been cut by Bayview Road. The stormwater pipe opens up in
19 the Boulevard Reserve - goes under Bayview Road and then
20 has pit openings between Bayview Road and the freeway.
21
22 Q. So when you say it opens up on one side of Bayview
23 Road do you mean that there's a grated pit?
24 A. It's completely open. The pipe is completely open.
25
26 Q. So it's a trench?
27 A. Yep.
28
29 Q. And then it goes under Bayview Road --
30 A. So the valley, it comes down to the pipe mouth.
31
32 Q. Yes. And then it goes under Bayview Road, and then is
33 there another grate or?
34 A. Yep. There's --
35
36 Q. So there's a pit with a grate on it on the other side
37 of Bayview Road?
38 A. Correct. Yep.
39
40 Q. And what did you observe on the boulevard side of
41 Bayview Road in the open trench?
42 A. There was no water activity at all.
43
44 Q. So one side of the stormwater, as far as you could
45 see, was dry, was it?
46 A. Yep.
47

1 Q. And then when you went over to the other side to the
2 open - sorry, I withdraw that - the grated pit --
3 A. Yep, yep.
4
5 Q. -- for the stormwater what could you see there or what
6 did you experience there?
7 A. I started to walk in. It was fairly overgrown with
8 grass and whatnot, and I - from 10 years or so ago I had
9 seen - it was clear and you could see where the
10 infrastructure - the pits and the lids kind of were. It
11 was hard to place with all the growth. But I walked into
12 where I thought they were until I could hear the sound of
13 rushing water and then the ground was absolutely soaked,
14 like, you sink in with your shoes, you almost couldn't
15 really go much further.
16
17 Q. So did you end up actually seeing the open - the
18 grated pit?
19 A. No, because it was completely buried in --
20
21 Q. Plants?
22 A. Plants. Weeds, whatever.
23
24 Q. And was it too boggy for you to get through there?
25 A. Yep.
26
27 Q. And did that cause you to have any concern about the
28 volume of water?
29 A. At that point I was sure something was very wrong.
30
31 Q. Yes. And did you have any concerns for your own
32 property?
33 A. Yep.
34
35 Q. What were those?
36 A. Well, that this was all very close to my property and
37 if it wasn't resolved could lead to compromising the
38 footings.
39
40 Q. Yes. So you were concerned, were you, that the volume
41 of water that was travelling around that pipe and through
42 the stormwater that you had heard --
43 A. And wherever else it might have been going.
44
45 Q. Yes. And did you - what did you do following visiting
46 the boulevard?
47 A. So after I went down the boulevard I decided to walk

1 down to the beach where this stormwater pipe comes out to
2 sort of follow - well, that's the natural conclusion of the
3 pipe - like, what's it look like at the other end.
4

5 Q. Yes.

6 A. So I walked down, down Margaret Street steps and - we
7 started at the top of View Point Road, down Margaret Street
8 step, across the beach to where the outfall of the
9 stormwater pipe is and --

10
11 Q. If we can just bring you back to show that on the map.
12 So - the text is quite small, but View Point Road, you can
13 see there's a series of orange dots, NOT03 and 02 and 04?

14 A. Yeah.

15
16 Q. That's View Point Road?

17 A. Yeah.

18
19 Q. And then it kinks back, and at the end of View Point
20 Road is that where the stairs are?

21 A. Yeah.

22
23 Q. And then that runs down to Margaret Street, which is
24 perpendicular to the Point Nepean; is that correct?

25 A. Yep. So the stairs come out right there.

26
27 Q. Yes.

28 A. And then you walk down there and across here, and the
29 outfall of the pipe's about here.

30
31 Q. So it's just out of shot, is it?

32 A. It's just in shot.

33
34 Q. Just in shot?

35 A. Yeah.

36
37 Q. So just there to the left of what looks like a car
38 park?

39 A. Yeah. It's a bit left of the car park.

40
41 Q. Yes. And would you regularly walk past that outfall?

42 A. Yes, I would.

43
44 Q. And you would observe then from time to time volumes
45 of water coming out of it?

46 A. Yep.

47

1 Q. And when would you normally observe - not in this
2 particular period, but when would you normally observe
3 water coming out of the outfall?
4 A. Like that, only after a really significant rain
5 event.
6
7 Q. So what was the volume of the water that you observed
8 coming out of the outfall? Do you have a --
9 A. The water was rushing out of this pipe and washing a
10 trench in the beach that was akin to a huge rain event that
11 we hadn't had.
12
13 Q. Yes. Would it kind of fill a bucket in seconds, the
14 amount of water that was coming out?
15 A. Yes. Multiple buckets in seconds.
16
17 Q. Yes. So it was, you know, multiple hoses worth of
18 water?
19 A. Yeah.
20
21 Q. And approximately when did you first observe that
22 outfall running?
23 A. That was the first time I had gone down there since -
24 that this had happened.
25
26 Q. So you didn't walk on the beach at that particular
27 location prior in late November or in early December?
28 A. Not that I recall. Probably, but not that I could
29 actually say, "I did it on this day."
30
31 Q. Yes. So the Christmas Day when you were there was the
32 first time that you can distinctly recall seeing a
33 significant flow of water coming out of that outfall?
34 A. Yeah. It was quite a sight. It was a real
35 eye-opener. I went back thinking, "There's something
36 really wrong here."
37
38 Q. Yes. And when is it that you observed the first,
39 second or third leaks starting to stop or slowing down?
40 A. So after New Year's we still had people looking for
41 the sources of the leaks, and people were trying to say it
42 was springs and whatever else. One of the South East Water
43 workers admitted they had had a 150mm water main blow out
44 on the other side of the freeway.
45
46 Q. Yes.
47 A. Which we later found out to be in that region of the

1 Boulevard Reserve, so I'm led to believe. It was within
2 days of that pipe being repaired that the water flow
3 stopped getting worse and started, for want of a better
4 word, receding.

5
6 Q. So where did you observe that stopping?

7 A. Out the front of number 1 Waller Place.

8
9 Q. So the third leak --

10 A. The third leak.

11
12 Q. -- as you've called it? So when you observed the
13 third leak stop what did you observe in respect to the
14 second and first leaks?

15 A. They were - they started immediately to slow down as
16 well.

17
18 Q. So was it on the same day that you noticed them all
19 slow down?

20 A. No.

21
22 Q. So you said you observed the third leak slowing down
23 first?

24 A. That slowed down the first, and it was also the
25 quickest one to slow down. It virtually stopped by
26 21 January, I think.

27
28 Q. So within three weeks it had stopped?

29 A. It stopped.

30
31 Q. The third leak?

32 A. Yep. There was no more water running over the road.
33 The nature strip was drying out.

34
35 Q. And when did you observe the second leak to begin
36 slowing down?

37 A. Much later.

38
39 Q. So can you give - weeks or?

40 A. Yeah, probably a week, week and a half.

41
42 Q. So around 7 January it started to slow down?

43 A. Yep.

44
45 Q. And what about - when did the leak - was that the
46 first leak you were talking about or the --

47 A. Well, the first leak after the landslide they came and

1 put a diversion drain into it.

2

3 Q. Yes.

4 A. So that stopped that one.

5

6 Q. So you were talking then about the third leak, the one
7 on the corner?

8 A. Yeah, yep

9

10 Q. So the third leak started slowing down on the corner
11 roughly a week after the - sorry, I withdraw that. The
12 second leak, being the one on the corner of Coburn and
13 Charlesworth --

14 A. Yes.

15

16 Q. -- that's the one that started slowing down about a
17 week after the third leak, which was the one on Waller
18 Place?

19 A. They all started to slow at the same time, but the
20 third leak slowed down the quickest, like, it went to -
21 stopped, and the others were still leaking but just slowly
22 petering out.

23

24 Q. Yes. Okay.

25 A. I hope that makes sense. I'm just trying to --

26

27 Q. Yes, it does make sense. Thank you. I think my
28 questions might have been a bit - made it a bit more
29 confusing than it needs to be. But it sounds like
30 effectively what you're describing is that they started
31 slowing down from Waller Place first, that started slowing
32 down first and slowed down the quickest?

33 A. Yep. Yep, correct.

34

35 Q. Then at some point there were works at the corner of
36 Waller and Charlesworth --

37 A. Yep.

38

39 Q. -- that stopped that, as far as you could tell?

40 A. Correct. They put in a drain. You could see it
41 running into the stormwater pit for a bit until it stopped.

42

43 Q. Yes. And then at the corner of Coburn and
44 Charlesworth that also started slowing down about a week
45 after the one on Waller and then eventually --

46 A. Actually, I also add why - the whole left-hand side of
47 Charlesworth as you were leaving, there was water coming -

1 leaking out of the nature strip the whole way down there.

2

3 Q. When did that water start leaking?

4 A. Well, that started leaking with the third leak
5 probably.

6

7 Q. So when the leak on --

8 A. It was just coming out of everywhere in the end.

9

10 Q. When the Waller Place leak started, the third leak,
11 out the start of number 1, that was when you started
12 noticing water running down the nature strip of
13 Charlesworth --

14 A. Yep.

15

16 Q. -- as well as from the original first leak site --

17 A. Yep.

18

19 Q. -- on the corner?

20 A. Yep.

21

22 Q. Okay. Thank you. And do you have a recollection of
23 when it was that you noticed works occurring on the corner
24 of Coburn and Waller - sorry, Charlesworth and Waller?

25 A. Yep, Charlesworth and Waller, that was the 15th, the
26 day after the landslide.

27

28 Q. Yes. And did you personally see the works going on?

29 A. I did.

30

31 Q. And did you talk to any of the people - the workers
32 there?

33 A. I did.

34

35 Q. And do you know if they were from the council or South
36 East Water or somewhere else?

37 A. They - there was definitely - I spoke to people from
38 the council, but I think everybody was there.

39

40 Q. Yes. And what makes you say that?

41 A. I'm pretty sure on that day I saw - I definitely spoke
42 to council and I'm pretty sure I saw South East Water.
43 Everyone who could be was there.

44

45 Q. Yes. And did you say anything to them?

46 A. I did.

47

1 Q. And what was that that you said to them?
2 A. The first thing I said was, "It took a house to fall
3 down the hill before you came and did something."
4
5 Q. Yes?
6 A. Which sounds like I was being a smart-arse, but really
7 it was just - it just felt so like we had been walking
8 around in circles for weeks and weeks, handballing whose
9 fault and problem this was, and no-one wanted to dig a hole
10 in the ground and look or doing anything until something
11 bad had happened.
12
13 Q. And when you say "handballing the problem", what are
14 you referring to there?
15 A. They would talk amongst themselves about who's owning
16 the water now, and if it was - entered the stormwater pipe
17 it was the council's, if it was a spring, it's like no-one
18 seemed to know. It was --
19
20 Q. So when you say they would talk amongst themselves --
21 A. Well - yeah.
22
23 Q. -- in - would they tell you that or?
24 A. Yes, I would be standing there and they'd be - they'd
25 say that.
26
27 Q. So you had been in conversations with people from both
28 the shire and South East Water?
29 A. (Witness nods).
30
31 Q. And in those conversations there had been discussion
32 about whose responsibility it was?
33 A. Yep. That seemed to be one of the - from what I could
34 see, that looked like the biggest stumbling block to the
35 whole affair.
36
37 Q. Yes. And on the 15th, you said when you observed the
38 works on the corner, did they tell you what work they were
39 performing?
40 A. Yes. They were planning to put some kind of wall at
41 the front of the hole they had dug to try and, I imagine,
42 dam the water, and then they put in an agricultural drain
43 to pipe it off into another - into the existing stormwater
44 network.
45
46 Q. So had they already dug up the road at that point?
47 A. The excavator turned up on the morning of the 15th.

1
2 Q. Yes. And so when you say they wanted to put a wall in
3 the hole do you know what was in that hole?
4 A. As in?
5
6 Q. Well, I assume they dug a hole to excavate around
7 where they thought the source of the water was to divert it
8 off. So do you have any idea about what it is that they
9 were digging on?
10 A. I did see, because I looked in the hole.
11
12 Q. Yes?
13 A. And the face of the hole was just all - the whole face
14 was just weeping water out.
15
16 Q. Yes. And did it have a pipe in it or have something
17 else in it?
18 A. No, there was no pipe. There was some packing sand
19 that had been put in a trench at some point for some
20 reason.
21
22 Q. Yes.
23 A. But I didn't see a pipe.
24
25 Q. And do you have any idea what sort of wall it is that
26 they were --
27 A. I don't really know what that, yeah --
28
29 Q. No, that's okay.
30 A. -- consisted of.
31
32 Q. Did you receive any written correspondence in respect
33 to the leak?
34 A. I did.
35
36 Q. And what was that?
37 A. I received a letter from South East Water on I think
38 17 January.
39
40 Q. Okay. That's the document you've provided with your
41 statement?
42 A. Yes, it is.
43
44 Q. Can we have that brought up, please. The doc ID is
45 RES.0003.0002.0002. Sorry, that incorrect. It's
46 RES.0004.0002.0002. Is this a copy of the note that you
47 received?

1 A. It is.

2

3 Q. The fourth paragraph down under the first heading
4 "Supporting our customers in McCrae region", "The
5 preliminary data from our tests indicate the water is not
6 from South East Water's network"?

7 A. Yep.

8

9 Q. Were you at that time aware - had you heard any
10 conversations in respect of tests, tests to the water?

11 A. Yes.

12

13 Q. And what were those?

14 A. Before the landslide and on the night - the afternoon
15 of 24 January they were testing water to look for trace
16 chemicals in it that would suggest it was from the town
17 supply. They said they were doing this.

18

19 Q. Okay. So, sorry, just to break that down --

20 A. Yeah.

21

22 Q. -- can you recall when your first conversation was
23 about the water testing?

24 A. That was - like, that was during the whole - everyone
25 in the street during the weeks.

26

27 Q. Yes.

28 A. Common.

29

30 Q. So in December some time?

31 A. December, yeah. Definitely on the 24th, though, it
32 was mentioned then.

33

34 Q. So on Christmas Eve --

35 A. Christmas Eve, yes.

36

37 Q. -- in that conversation it was also mentioned, and
38 they mentioned that they were testing the water?

39 A. Yep.

40

41 Q. And did you know where the people were from that you
42 were talking to? South East Water, I assume?

43 A. South East Water.

44

45 Q. And did you talk - I withdraw that. Did you send any
46 further correspondence yourself in respect to the water?

47 A. I did.

1
2 Q. And this is, I assume, on the 22nd you sent two emails
3 to Mr Groth MP?
4 A. I did.
5
6 Q. Can I get up those - I'll get the number. It's
7 RES.0004.0002.0003. If we can scroll to the bottom of that
8 page. Sorry, the next down, please. The next page down.
9 Sorry, one up. Is this one of the emails there? You see
10 in the middle from Brett Cooper to - it's been redacted for
11 personal information, but is this one of the emails that
12 you're referring to?
13 A. It is.
14
15 Q. And is the contents of this email true and correct as
16 it was at the time?
17 A. Yes.
18
19 Q. Does it contain your recollection of - accurate
20 recollection of the events at that time, in 22 January,
21 when you sent it?
22 A. Yes.
23
24 Q. Can you please confirm - so at the top of that page
25 you can see the footer of the reply email is Max Patton at
26 Mornington Peninsula; is that who you sent the email to?
27 A. I sent one to Max Patton as well.
28
29 Q. So this is different to the email you were talking
30 about before about the member?
31 A. That is the same email.
32
33 Q. So you sent the same email, one to the council and one
34 to your local member?
35 A. Correct.
36
37 Q. Yes. Thank you. You describe in that email that, "As
38 we all know" - this is the third line down - "water has
39 been leaking out of the ground in Waller Place and
40 Charlesworth for a significant time. My house is number 5,
41 and alongside the boundary runs a drainpipe that originates
42 in the boulevard on the other side of the freeway where a
43 natural valley now basin exists. We had SEW at our
44 property numerous times doing leak detection. At the rear
45 of our property is a service pit which was inspected and
46 okay. During this inspection I discussed with them the
47 drain and the water running through it being way more than

1 normal , "and you go on. That's a summary of the evidence
2 that you've given so far this morning?

3 A. Correct.

4
5 Q. Sorry, this afternoon?

6 A. Correct.

7
8 Q. And the bottom of that page, it starts, fifth line up
9 from the bottom, "After the repair of this pipe and in the
10 days before the landslide some areas in Waller Place began
11 drying up, specifically a major area where significant
12 water was rising at number 1 Waller and constantly flowing
13 into the drain in front of number 4"?

14 A. Correct.

15
16 Q. So is that the third leak?

17 A. It is.

18
19 Q. Thank you. In February 2025 you met Mr Kevin
20 Hutchings and Mr John Bolch; is that correct?

21 A. I did.

22
23 Q. And can you remember the date on which that occurred?

24 A. I believe it was the 14th.

25
26 Q. Yes. And could you explain to the chair what it is
27 that you discussed with them?

28 A. Basically discussed this.

29
30 Q. Yes, "this" being --

31 A. Exactly this.

32
33 Q. So when you say "this" you mean the evidence you have
34 given --

35 A. Yes.

36
37 Q. -- and the explanation you provided to the board this
38 afternoon?

39 A. Exactly. Pretty much what's written in that email
40 right there is what I communicated verbally to Kevin and
41 John.

42
43 Q. And what else did you do with them?

44 A. So I first met them, I told them about this. John
45 came back and we looked at some maps, and we went around to
46 the boulevard to look for the stormwater infrastructure
47 that was there.

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Q. Yes. And did you show them the infrastructure at the back of your property as well?

A. And I showed them - yes, and I showed John the infrastructure at the back of my property.

Q. So you attended the boulevard together?

A. Yes.

Q. Did you. And similarly to before - well, I withdraw that. How was it different, if at all, from when you previously visited?

A. Well, you could see where they had done a pipe repair. The ground was significantly disturbed.

Q. Yes.

A. And it was also dry.

Q. So, compared to previously, could you kind of walk deeper into the --

A. You could. You could walk - if you didn't mind worrying about snakes, you could walk right through it.

Q. Yes. And was the ground - was it wet at all or was it --

A. Not really, no.

Q. So it wasn't spongy?

A. No.

Q. And could you see or hear any water?

A. Not any more. You could see where water had been.

Q. What do you mean by that?

A. I'm probably getting two events into one - I'm probably combining two events into one here by accident.

Q. Okay.

A. We couldn't find what we were looking for because of the undergrowth and then we went away.

Q. So, sorry, then - so you --

A. It was dry. You could see where significant works had been - happened, but we couldn't find what we were looking for because of the overgrowth.

Q. So let's just be clear about this. You said a moment

1 ago that it was on the 14th that you met John and Kevin?

2 A. I met John and Kevin on the 14th.

3

4 Q. Yes. And was it on that day that you showed them
5 through to the back of your property?

6 A. No.

7

8 Q. No?

9 A. No.

10

11 Q. Did you go anywhere with them on that day?

12 A. No.

13

14 Q. No. So then when was it that you showed one of John
15 or Kevin or both the back of your property and the
16 boulevard?

17 A. I believe it was 20 February.

18

19 Q. Yes, okay. And can you recall was it one or - either
20 or both?

21 A. Just John.

22

23 Q. Okay. And so it was on that date that you walked
24 around to the boulevard and you attempted to find the --

25 A. Yeah.

26

27 Q. Yes. Thank you. Those are all the questions that
28 I wanted to ask. Is there anything else that you wanted
29 to - any other further evidence you wanted to provide to
30 the chair?

31 A. I don't think so. I think we've covered everything
32 important I probably had to say.

33

34 Q. Great. Thank you. No further questions, Chair.

35

36 CHAIRPERSON: Thanks, Mr Cooper. Are there any questions?

37

38 MS SIEMENSMA: Madam Chair, I have had a brief discussion
39 with my learned friend. There is one issue that I wanted
40 to ask about the stormwater drains.

41

42 CHAIRPERSON: Yes, you can do that.

43

44 <EXAMINED BY MS SIEMENSMA:

45

46 CHAIRPERSON: Mr Cooper, this is counsel appearing on
47 behalf of South East Water, and she has been given

1 permission to ask you some questions.

2 A. Okay.

3

4 MS SIEMENSMA: Good afternoon, Mr Cooper. I wanted to
5 just clarify a statement you've made in relation to
6 paragraph 48 of your statement. You talk about locating a
7 stormwater pit, or two stormwater pits. I just wanted to
8 check the location of that. You say you were "able to
9 locate two pits beyond the basin fence towards the
10 Mornington Peninsula Freeway. Kevin and John pointed out
11 what they believed to be the location of the first water
12 pipe. It was slightly uphill from the two pits"?

13 A. Yep.

14

15 Q. Madam Chair, just to indicate, my instructor had sent
16 through earlier today a picture, and I'd be indebted if
17 that could be shown on the screen for Mr Cooper. There
18 were two photos sent through. It's the second of those.
19 I understand the reference is SEW.9999.9999.0001.

20 Mr Cooper, just while that's coming up, could I ask when
21 you say you identified the two pits did you do that by
22 reference to a map or did you physically --

23 A. John Bolch had a map.

24

25 Q. Yes.

26 A. Of - yeah.

27

28 Q. This may be a sign we have action. Okay. Now,
29 Mr Cooper, just to give you some bearings, you'll see a
30 road at the bottom of that picture, and if I can indicate
31 that that's Bayview Road?

32 A. Yep.

33

34 Q. And at the top there is a bit of road in the top
35 left-hand corner?

36 A. Yeah, that would be the freeway.

37

38 Q. That's the Mornington Peninsula Freeway?

39 A. Yep.

40

41 Q. And if I could ask you where you're talking about pits
42 are you able to identify on that map the pit that you're
43 talking about, or the pits?

44 A. Yeah, that green - that. I believe if that's drawn in
45 the right spot, it'd be that.

46

47 Q. Yes. So you're pointing to, the left of centre, a

1 grated pit in green?
2 A. Yep.
3
4 Q. To the left of "extent of sand found". And could
5 I ask you when you went up to what you call the burst
6 site --
7 A. Yes.
8
9 Q. -- did you walk over to that pit, the grated pit?
10 A. On what day are we referring to?
11
12 Q. So, as I understood paragraph 48 and what was
13 following, we were talking about 27 February?
14 A. 27 February? Yes, we did.
15
16 Q. You walked over?
17 A. That was with Kevin.
18
19 Q. And you've made some observations in your statement
20 about the burst site?
21 A. Yes.
22
23 Q. And the vegetation and the sediment that you saw, and
24 what conclusions you draw from that?
25 A. Yeah.
26
27 Q. Did you make any observations about the vegetation and
28 the sediment in the area from the burst site through to
29 that grated stormwater drain?
30 A. Yes. Well, you could see a significant amount of
31 water had run from where the site of the repair had been to
32 that drain.
33
34 Q. Yes. So you could see the sediment, the dirt --
35 A. Yep.
36
37 Q. -- and vegetation?
38 A. You could see water had been flowing through there,
39 like, significantly flowing.
40
41 Q. Up to the drain?
42 A. Yeah. Well, it's actually down to the drain --
43
44 Q. Down to the drain. And as I understand it, Mr Cooper,
45 the area from the burst - well, I'll indicate to you. The
46 burst site is the red to the right. I might come over to
47 the screen and indicate that that's the site of the burst,

1 where the red plant-like --

2 A. Yep.

3

4 Q. -- diagram is. So you're saying from that site all
5 the way to the green grate there was evidence of damaged
6 vegetation and sediment?

7 A. Yep.

8

9 Q. And the land along that path slopes downward; is that
10 correct?

11 A. Yep.

12

13 Q. And it slopes further downward from the grate, the
14 green grate, down to the freeway; is that correct?

15 A. Yeah. It would be hard to tell because it was -
16 there's that much foliage and it's dense and to actually -
17 you could assume that, but I couldn't say for certain that
18 it did.

19

20 Q. Okay. And, as I understand it, the distance between
21 what I've called the burst site through to the green grated
22 drain is less than 30 metres; is that correct?

23 A. Yeah, I would say it's less than 30 metres. It's not
24 far.

25

26 MS SIEMENSMA: Okay. I have no further questions. Could
27 I tender that diagram, please?

28

29 CHAIRPERSON: Yes, Ms Siemensma. That photograph will be
30 exhibit SEW1.

31

32 **EXHIBIT #SEW1 PHOTOGRAPH.**

33

34 MS SIEMENSMA: Thank you.

35

36 CHAIRPERSON: Do you have any questions arising from those
37 questions, Mr Di Stefano?

38

39 MR DI STEFANO: Yes, just one follow-up question.

40

41 **<EXAMINED BY MR DI STEFANO:**

42

43 MR DI STEFANO: So you said a moment ago that you walked
44 through to approximately the green hatched, looks like,
45 grate diagram there in that picture?

46 A. Okay. So what day are we talking about now?

47

1 Q. On 27 February?
2 A. 27 February, yes.
3
4 Q. And --
5 A. John, myself and Kevin went there.
6
7 Q. Were you able to see where - can you explain for the
8 chair - I think it's important you explain for the chair
9 how densely vegetated that area is?
10 A. You pretty much had to, like, cut your way to it.
11
12 Q. Okay. And what do you mean by that, that there's
13 brush --
14 A. Yep.
15
16 Q. -- at kind of body level?
17 A. Yep.
18
19 Q. So were you able to see much further than a few metres
20 within that brush?
21 A. No.
22
23 MR DI STEFANO: No. Okay. No further questions.
24
25 CHAIRPERSON: Mr Cooper, that completes your evidence.
26 Thank you very much for coming along. Your evidence has
27 been of great assistance.
28 A. Thank you.
29
30 **<THE WITNESS WITHDREW**
31
32 MR DI STEFANO: Chair, Ms Kittikhoun is going to take the
33 next witness. Thank you.
34
35 CHAIRPERSON: And is the next witness Mr Hutchings?
36
37 MS KITTIKHOUN: Yes, that's correct, Madam Chair. Madam
38 Chair, I now call the fourth witness for today, Mr Kevin
39 Barry Hutchings.
40
41 **<KEVIN BARRY HUTCHINGS, affirmed:**
42
43 **<EXAMINED BY MS KITTIKHOUN:**
44
45 CHAIRPERSON: Mr Hutchings, Ms Kittikhoun has some
46 questions for you. She is one of the counsel assisting the
47 inquiry, and once Ms Kittikhoun completes her questions

1 others may have some questions for you.

2 A. Thank you.

3

4 MS KITTIKHOUN: Good afternoon, Mr Hutchings.

5 Mr Hutchings, could you please state your full name for the
6 record?

7 A. Kevin Barry Hutchings.

8

9 Q. And you reside in Mentone at an address that is know
10 to the inquiry?

11 A. I do.

12

13 Q. What is your current occupation, Mr Hutchings?

14 A. I'm retired.

15

16 Q. Did you receive a notice from the inquiry to attend
17 and give evidence today?

18 A. I did.

19

20 Q. And, Mr Hutchings, did you make a witness statement
21 for the inquiry?

22 A. I did.

23

24 Q. Could a copy of the witness statement and its exhibits
25 please be provided to Mr Hutchings. Mr Hutchings, are the
26 contents of that statement true and correct?

27 A. They are.

28

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

31

32 CHAIRPERSON: The statement of Kevin Barry Hutchings and
33 the documents referred to in that statement will be exhibit
34 CA18.

35

36 **EXHIBIT #CA18 STATEMENT OF KEVIN BARRY HUTCHINGS AND**
37 **DOCUMENTS REFERRED TO THEREIN.**

38

39 MS KITTIKHOUN: Thank you, Madam Chair. Mr Hutchings, you
40 said that you're currently retired, but before you retired
41 you worked in the water industry for 22 years?

42 A. I did.

43

44 Q. Which entity did you work for during those years?

45 A. South East Water.

46

47 Q. For the entire 22 years?

1 A. Yes.
2
3 Q. You held various positions at South East Water?
4 A. I did.
5
6 Q. Including the role of managing director?
7 A. I did.
8
9 Q. When were you the managing director of South East
10 Water?
11 A. 2011 to 2017.
12
13 Q. Mr Hutchings, it would be fair to say then that given
14 your experience at South East Water you have extensive
15 knowledge and experience in the maintenance of water
16 infrastructure, including water and sewer networks?
17 A. Yes
18
19 Q. But, to be clear, you're not a hydrologist?
20 A. No.
21
22 Q. Nor do you have experience in geotechnical
23 engineering?
24 A. No.
25
26 Q. Mr Hutchings - sorry, did you need to pour yourself a
27 glass of water, Mr Hutchings?
28 A. I did. Thank you.
29
30 Q. Now, Mr Hutchings, you mentioned earlier that you live
31 in Mentone, but you have a connection to McCrae through
32 your mother-in-law; is that right?
33 A. Correct.
34
35 Q. Your mother-in-law owns the property at 6 View Point
36 Road?
37 A. She does.
38
39 Q. Mr Hutchings, in the interests of brevity, I'm going
40 to refer to that property at 6 View Point Road as the
41 family property moving forward. Your mother-in-law
42 purchased the family property with your late father-in-law
43 in around 2002?
44 A. Correct.
45
46 Q. Can you tell us a little bit about the family
47 property?

1 A. My father-in-law built that property as a master
2 builder, and it's a double-storey place some 55 squares in
3 size, six bedrooms, five bathrooms, and really has been the
4 centre of the family for those 20 years. It's where all
5 the family congregates, so. Yeah, lots of steel and
6 concrete.

7
8 Q. A family jewel?

9 A. Yes.

10
11 Q. So is the family property located to the north-west
12 of - sorry, is the Morans' property located to the
13 north-west of the family property?

14 A. It is.

15
16 Q. Downhill from the family property?

17 A. Yes.

18
19 Q. And the western boundary of the family property,
20 that's shared with 10-12 View Point Road?

21 A. Yes.

22
23 Q. So, if one were looking on View Point Road facing the
24 beach, 10-12 View Point Road would be on the left of
25 the family property?

26 A. Yes.

27
28 Q. Mr Hutchings, your mother-in-law no longer resides at
29 the family property; is that right?

30 A. Correct.

31
32 Q. From August 2024 your family was preparing to put the
33 family property on the market?

34 A. Yes.

35
36 Q. Did it largely remain vacant from that time?

37 A. The odd family member stayed there overnight or two,
38 grandchildren dropped in, et cetera, yes. But as far as
39 residential - lots of tradesmen but, no, not family
40 members.

41
42 Q. I understand. On Christmas Day did your family visit
43 the family property?

44 A. Yes, we did.

45
46 Q. Could you tell us a bit about what happened that day?

47 A. Yes. It was quite a big day for us all, really,

1 because it was the final Christmas after spending 20 years
2 of Christmas in that house well loved by the family. Since
3 my father-in-law passed it was time to actually take the
4 mother-in-law back there. The house was pretty well empty
5 as well, so it was very different from when she lived
6 there. And we celebrated the last 20 years there and
7 really the final time she would see the house. We didn't
8 know it was going to turn out like this. We thought it was
9 going to be sold and make way for her payments for the aged
10 care.

11
12 Q. I see. While you were at the family property on
13 Christmas Day did you notice anything in or around the
14 property to suggest that there was a risk of a landslide
15 occurring?

16 A. No.

17
18 Q. So there were no unusual signs of water?

19 A. None.

20
21 Q. Were there any signs of the ground eroding?

22 A. No.

23
24 Q. Mr Hutchings, I'm now going to turn to some questions
25 concerning the landslide that occurred on 5 January 2025.
26 You weren't at the family property on 5 January; is that
27 right?

28 A. I was not, no.

29
30 Q. When did you first learn about the landslide that
31 occurred on 5 January?

32 A. Not until the 7th.

33
34 Q. And how did you find about the landslide?

35 A. My brother-in-law, Dayle, phoned me and said there's
36 been a small slip on the property, so that's how I found
37 out.

38
39 Q. And when he said did he say on the property or?

40 A. No, on next door.

41
42 Q. Next door. By "next door", what do you mean by that?

43 A. 10 - 10 View Point, yeah.

44
45 Q. 10-12 View Point Road?

46 A. Yes.

1 Q. What happened after Dayle told you this news?
2 A. I was on my way to the dentist. I cancelled it and
3 I drove down there.
4
5 Q. I see. So you arrived at the family property?
6 A. I did.
7
8 Q. And can you tell us what you did when you arrived at
9 the family property?
10 A. I opened up the roller door and I went in, looked at
11 the house, all looked fine, couldn't see any issue, and
12 then I went out to the balcony to see if I could see
13 anything that was different, and there was something
14 different, not significant but it was there, I could see
15 it, where there was a piece of land.
16
17 Q. Yes. Could you just describe the location of the
18 balcony?
19 A. It's at the very front of the house and encases the
20 whole northern view, and plus you can go around the sides
21 as well.
22
23 Q. So the balcony faces towards the beach?
24 A. Yes.
25
26 Q. And to the left would be 10-12 View Point Road?
27 A. Correct.
28
29 Q. I see. If we could please go to exhibit 1 to
30 Mr Hutchings' statement, which is RES.0011.0001.0002.
31 Mr Hutchings, is this a photo that you took?
32 A. It is.
33
34 Q. And you took it on 7 January from the balcony of your
35 property, of the family property?
36 A. I did. You can see the part of the balcony on the
37 bottom left-hand corner.
38
39 Q. Could you please explain to Madam Chair what is
40 captured in this photo?
41 A. It's unfortunately not that clear, but I took a
42 picture because there's actually water running out. In
43 that picture of where the soil is clean, it was running out
44 quite strongly.
45
46 Q. So, to be clear, are you referring to about the middle
47 of the photo?

1 A. Correct. If we go just slightly to the right, yep,
2 and down a bit, yep, it's around - to the left. It's that
3 darker patch there that it's actually flowing out, and that
4 was the only source I saw, was a single source.
5
6 Q. So that's not a shadow, to confirm?
7 A. I can't - I don't think so. I think that's the
8 location. I need to - I'm not sure, but one of those is
9 water flowing.
10
11 Q. So you saw water --
12 A. If I zoomed in I might be able to get a closer look at
13 it.
14
15 Q. Could we please blow that up. So you saw water
16 flowing out of the escarpment on 7 January?
17 A. Certainly. Certainly.
18
19 Q. Was the flow of the water constant so far as you could
20 tell?
21 A. Oh, yes, yes.
22
23 Q. Had you ever seen water coming out of the escarpment
24 like that before?
25 A. No.
26
27 Q. Could you give a rough estimate of where the water's
28 exit point was relative to 10-12 View Point Road?
29 A. Where the exit point was?
30
31 Q. The exit point, yes, relative to the ground level of
32 10-12 View Point Road?
33 A. Oh, it's - I'm going to say - if I use the retaining
34 wall as a reference, I'd say it's about four, five, perhaps
35 six metres. It's hard to judge without a tape measure, but
36 it's in that vicinity.
37
38 Q. So about five to six metres --
39 A. Yes.
40
41 Q. -- from the base of the retaining wall --
42 A. Yes
43
44 Q. -- on 10-12 View Point Road?
45 A. It was quite deep.
46
47 Q. Having seen the water flowing out of the escarpment,

1 what did you do next?
2 A. I then went out - so that's the Morans' house on the
3 right-hand side, as we can see that down the bottom of the
4 hill. So there's steps on the right-hand side that you can
5 actually get all the way down to the back or near to the
6 back. And I thought I'll get down there and perhaps get
7 another shot down there. But it's very steep and I feel
8 very uneasy - even before this I felt uneasy down there.
9 But I couldn't get a shot. It's just foliage. It's just
10 very thick.
11
12 Q. So you went down to the back of the family property?
13 A. Correct.
14
15 Q. You descended the stairs?
16 A. I didn't go onto the - no - Morans' property.
17
18 Q. And you went down there to get a closer look of the
19 water?
20 A. Yes, but I couldn't.
21
22 Q. You couldn't due to the dense vegetation; is that
23 right?
24 A. It's thick as down there, yes.
25
26 Q. So you couldn't see the water flowing from that
27 vantage point?
28 A. No, but I could hear it.
29
30 Q. You could hear it. And what did the water sound like?
31 A. It was like a babbling brook, I'd put it. So
32 I presume it was falling on something because there was
33 certainly - it was quite noticeable; loud.
34
35 Q. I see. After making these observations did you see
36 any signs of damage to the family property?
37 A. To our family property?
38
39 Q. Yes.
40 A. No.
41
42 Q. Did you remain at the family property on 7 January?
43 A. I did because my duties were to tidy the study up. So
44 I thought, "Well, I'll get started into that." I finished
45 that and then drove home.
46
47 Q. You drove home?

1 A. Yes, I did. I drove straight home.
2
3 Q. Did you return to the family property the next day on
4 8 January?
5 A. Yes, to finish my duties in the study.
6
7 Q. Did you go out onto the balcony again to observe the
8 landslide site?
9 A. I did.
10
11 Q. What did you see?
12 A. I saw the water flowing, but it was a sunnier day and
13 the sun was catching it and I thought that would be - I'll
14 take a bit of a video so I can show all the family of what
15 was happening there.
16
17 Q. I see. If we could please go to exhibit 2 to
18 Mr Hutchings' statement which is RES - you're on it.
19 A. I think that's rotated, isn't it, 90 degrees?
20
21 Q. Madam Chair, before we play the clip I'll just note
22 that the audio to the video has been cut out, just like
23 Mr Costello's videos, for the purpose of the examination.
24 But once the videos are tendered through the exhibits they
25 will have audio. This is a short video recording that you
26 took on 8 January from the balcony?
27 A. Yes. It is rotated at 90 degrees. So we'll live with
28 that for this.
29
30 Q. Yes.
31 A. But you can actually see the water flowing quite
32 clearly there.
33
34 Q. And it's flowing steadily from the escarpment?
35 A. That is.
36
37 Q. Now, either on 7 January or 8 January while you were
38 on the balcony of the family property did you see the owner
39 of 10-12 View Point Road observing the landslide site?
40 A. I did. He was there, and I reached out and gave a
41 wave.
42
43 Q. I see. Operator, we can take that down. Thank you.
44 You called out to him. And did you ask to speak with him?
45 A. I did.
46
47 Q. And did he agree to meet with you?

1 A. Yes.
2
3 Q. Shortly thereafter you met the owner on View Point
4 Road?
5 A. Yes.
6
7 Q. Where did you meet?
8 A. Outside his gate area on 10-12.
9
10 Q. What did you ask him?
11 A. Basically - I didn't really know any of the people
12 down there. So it was one of our first introductions. So
13 I said, "What's happened, and have you got water running
14 anywhere" et cetera, and we just spoke about the Morans'
15 property. I asked if it was flowing down at the end as
16 well, and he said that it was either flowing through or
17 under the property.
18
19 Q. I see. And had he indicated to you whether he had
20 seen water flowing out of the escarpment from that location
21 before?
22 A. He said - my recollection is he said he didn't see any
23 water there.
24
25 Q. Did you leave the family property after that
26 conversation with the owner of 10-12 View Point Road?
27 A. I did. I think I went inside and tidied up again
28 more. But I left.
29
30 Q. And did you return to the family property between
31 9 January and 13 January?
32 A. No.
33
34 Q. Mr Hutchings, I'm now going to turn to some questions
35 concerning the landslide which occurred on 14 January.
36 When did you first find out about the 14 January landslide?
37 A. It was in the morning, the following morning. I got a
38 phone call from my brother-in-law once again.
39
40 Q. Sorry, did you say the following morning or the
41 morning of the 14th?
42 A. No, the morning of.
43
44 Q. The morning of?
45 A. Sorry, apologies.
46
47 Q. So your brother-in-law called you again?

1 A. He did.
2
3 Q. Dayle?
4 A. Correct.
5
6 Q. What did Dayle say during that conversation?
7 A. He said, "There's been a further slip and it's
8 bigger."
9
10 Q. Did he say where the landslide had occurred?
11 A. He insinuated that some of our land may have been
12 affected.
13
14 Q. And that is the land that borders with the property on
15 10-12 View Point Road?
16 A. Correct, yes.
17
18 Q. I see. And what happened after you learned of this
19 news?
20 A. I said to him, "Look, I'll drive down there and have a
21 look again and let you know." And he indicated that he
22 might show up later on as well. He's a builder and was
23 working on the other side of town. So I drove to McCrae.
24
25 Q. What time did you arrive in McCrae?
26 A. It might be - I'd say between 9.30, 10, around that
27 time.
28
29 Q. I see. Were you able to access the family property?
30 A. No. I couldn't get into View Point Road.
31
32 Q. And why is that?
33 A. There was a police vehicle blocking the road.
34
35 Q. I see. Did you speak to the police officer?
36 A. I did. I explained who I was. I parked down the road
37 and went back, explained my relationship with the property,
38 and left her my phone number. She asked for it, so I left
39 the phone number, and then I proceeded down.
40
41 Q. You proceeded down to the family property?
42 A. Correct.
43
44 Q. So once you were let through you walked to the family
45 property. What did you see?
46 A. There was a lot of orange vests around. Many of them
47 I think were SES. And there was a truck there as well, a

1 large SES truck. So I presume the fact they were sitting
2 on it they were SES.
3
4 Q. When you say there was a truck there where was the
5 truck located?
6 A. Opposite the gateway of 6 View Point Road.
7
8 Q. On View Point Road. Yes.
9 A. So, yes, they could have well been council as well
10 there, but I was trying to gather my thoughts just around
11 the whole situation and who could give me some information.
12
13 Q. I see. Who did you speak to?
14 A. Mainly the SES people. They were gathered there and
15 they stayed there for a period of time. And I just really
16 listened into conversation rather than anything else,
17 trying to get - because there was no information at all.
18
19 Q. Yes. Did the SES volunteers tell you anything about
20 water at that stage?
21 A. They indicated there was water present; water's
22 flowing down the hill.
23
24 Q. Water was flowing down the hill?
25 A. Yes.
26
27 Q. Were you able to see that water flow?
28 A. No.
29
30 Q. No. And why is that?
31 A. Well, when you look from View Point Road it's just the
32 house front, and it drops sharply after the houses finish.
33 So it was way too low; you couldn't see anything.
34
35 Q. Were there other people in the vicinity of the family
36 property at this time?
37 A. There were a lot of people walking up because, even
38 though they had closed the road, the stairways at the end
39 of View Point were still open. And I presume because the
40 highway was closed most people were taking the opportunity,
41 for whatever reason, to come up and have a bit of a look;
42 yes.
43
44 Q. I see. Did you recognise those people that were
45 milling about?
46 A. Many of them, no; only a couple that I recognised.
47 I remembered an old friend of my father-in-law. It must be

1 going back 10, 15 years, but I recognised his face.
2 I couldn't recall his name. But he stopped and chatted.
3 So I think - yes. So it was him, and there was another
4 friend walk past.
5
6 Q. I see. And whilst you were standing there did you
7 hear the people in the vicinity of the family home having
8 conversations?
9 A. I did.
10
11 Q. And what were they saying?
12 A. I heard people mention about the water up the road,
13 and I found that interesting because I had never heard of
14 this before.
15
16 Q. So that was the first time you heard about water up
17 the road?
18 A. Yes.
19
20 Q. And did you understand what they meant by "up the
21 road"?
22 A. I asked, "Where is this water up the road," and they
23 said Charlesworth.
24
25 Q. Charlesworth Street?
26 A. Street.
27
28 Q. Yes. And could you explain how far
29 Charlesworth Street is away from View Point Road?
30 A. I'd say 150 metres.
31
32 Q. And it's up the hill?
33 A. Correct.
34
35 Q. And did anyone tell you how long the water had been
36 flowing on Charlesworth Street?
37 A. I think the comment went along weeks. It was a very
38 casual conversation. I was more interested about where it
39 was.
40
41 Q. I see.
42 A. So I wanted to have a look at that before I left.
43
44 Q. I see. So you spent about three hours speaking to the
45 bystanders on View Point Road; is that right?
46 A. Yes. Most people were coming past just asking the
47 same question, "Which one's yours, and is it damaged?" And

1 the for sale sign was actually on the nature strip, and
2 I got fed up getting asked about, "You know, that's not
3 going to help." So I actually took that sign out and poked
4 it through the fence.

5

6 Q. I see. And after you left the family property did you
7 go to Charlesworth Street to view the water?

8 A. I did.

9

10 Q. And specifically did you drive to the intersection of
11 Charlesworth Street and Waller Place?

12 A. I did. I drove around it because the issue - there
13 was an issue in the road. So I drove around it, turned
14 around and then come back.

15

16 Q. I see. If we could please go to exhibit 3 of
17 Mr Hutchings' statement. This is a short video recording
18 that you took from your car on 14 January, the day of the
19 landslide?

20 A. Yes.

21

22 Q. Operator, could you please play the video.

23 A. You can actually see the water flowing from that hole
24 towards the manhole.

25

26 Q. Mr Hutchings, could you describe the observations that
27 you made on that day at that intersection?

28 A. I was surprised because it's the first time I've
29 actually seen this, and I thought, "Why isn't this
30 surrounded by workmen trying to sort this issue out?"
31 I actually hadn't made a connection. The fact that it was
32 water, though, concerned me. So I could see that it wasn't
33 coming out of the manhole. It's coming out upstream from
34 the manhole.

35

36 Q. Could you just identify what you mean by manhole?

37 A. The manhole is the round circled lid in the centre of
38 it, to the right on the road there behind the post.

39

40 Q. And what's the purpose of a manhole?

41 A. It's for people to access the sewer infrastructure to
42 get down, camera, cleaning, that type of thing.

43

44 Q. So you said that it looked like the water was coming
45 from above the manhole. So it didn't appear to be coming
46 from the manhole itself?

47 A. No, but I presume there's a trench there somewhere and

1 that was of interest to me.

2

3 Q. I see. Why did you conclude that the water was not
4 coming from the manhole itself?

5 A. It was flowing the wrong way.

6

7 Q. Flowing the wrong way?

8 A. It was flowing out of that hole and it just happened
9 to hit the man - and then carry on. And there's no odour
10 as well. And I thought if it was sewer, which it could
11 have been, but there was no odour.

12

13 Q. So you concluded that the water was unlikely to be
14 water overflowing from the sewer pipe itself?

15 A. Yes. And, it being sewer, it would be unlikely to
16 have any pressure in it to actually push its way up.

17

18 Q. Did you notice water leaking from the nature strips?

19 A. I did.

20

21 Q. And at the time did you think that the water could be
22 a result of drainage issues or trench flow or groundwater -
23 and/or groundwater?

24 A. Yes. Well, it could be either of those and I hadn't
25 decided or even thought much about it, to be quite honest,
26 because my head's spinning on this day. But I thought
27 perhaps the trench may have some involvement in it.

28

29 Q. Could you explain what you mean by trench flow?

30 A. Yes. When they dig a trench in any road
31 infrastructure, it doesn't need to be in a road, it can be
32 in a field, you obviously use an excavator and drag the
33 material out of the hole. They usually lay a bedding in
34 that base of that trench. It can be aggregate, it can be
35 sand, it can be whatever, but different types of product.
36 They then surround it with that same product, and then they
37 usually backfill it and possibly put the road - if it's
38 bitumen, put the road back on.

39

40 Q. And so what is trench flow?

41 A. It can be an issue where water can actually transfer
42 outside the pipe in that trench. Because it's coarse rock
43 it's full of holes. And it's a higher speed highway in
44 some places - high-speed highway for water to travel along,
45 especially if it's got grade downhill. Where it might take
46 years to go down there normally or weeks, it would be a
47 factor of many times faster going down that trench.

1
2 Q. Are sewer trenches typically graded to have a downfall
3 so force of gravity can operate?
4 A. Sewer always flow downhill, yes.
5
6 Q. Could you explain what groundwater is?
7 A. Groundwater is present in most places. It is
8 subsurface water, and can vary in height. It depends on
9 the local conditions. But there's water usually down.
10 It's where if people sunk a pipe they could put a well in,
11 if the conditions provided it. But it lives in harmony
12 with the environment because for thousands of years it's
13 been like that. It only gets troubled if it's disturbed.
14
15 Q. Did you think that the flow of water was odd or
16 unusual on that day?
17 A. Oh, yes. Very much so.
18
19 Q. But you didn't look into the water flow that day any
20 further; is that right?
21 A. No, at this stage I was more concerned about my wife
22 at home. I knew she was upset even when I left. So
23 I needed to get back home.
24
25 Q. I understand. Mr Hutchings, I'm now going to turn to
26 the next day, which is 15 January. On that day there was a
27 meeting at Dromana Hall for residents of McCrae?
28 A. There was.
29
30 Q. Do you recall who attended that meeting?
31 A. The majority of residents who I hadn't met, and the
32 council were there, and the SES were there, and Mr Pope was
33 there, and I think somebody from Transport might have been
34 sitting in the audience, and perhaps lawyers as well.
35
36 Q. I see. Did Mr Pope speak at this meeting?
37 A. He did.
38
39 Q. And what did he say?
40 A. Well, I thought he was the most informative, to be
41 quite honest, because he actually gave us some information
42 about the site, which is what we all wanted to hear. And
43 I think I may have asked the question that how much water
44 is flowing out, because I had seen it the week previous,
45 and he made a comment that he put a plastic bottle in the
46 flow and took a sample of it, and it was for one second.
47 So it could have been one and a half seconds or whatever.

1 But he put one second up, pulled it up, and he said it was
2 about 200 ml.
3
4 Q. And Mr Pope took this sample of water that was flowing
5 out of the escarpment near the Morans' property?
6 A. I believe it was.
7
8 Q. What did you think when you heard Mr Pope's
9 explanation?
10 A. While he was doing that I was actually doing the
11 calculation to see how much that was per day, and it was
12 17.2 tonne, 17,200 litres. So I was interested in that to
13 say, "Well, that's significant."
14
15 Q. So you calculated that in a day that level of flow
16 rate would result in 17.2 tonnes of water accumulating in
17 the ground or being dispersed?
18 A. Well, it was coming out of the ground. So, yes,
19 I presumed it was - that amount of weight was there. But
20 other people with higher skills would be able to answer
21 that.
22
23 Q. Did that volume of water concern you?
24 A. Yes, it did.
25
26 Q. Why is that?
27 A. Well, it's - for an escarpment like McCrae to have
28 that type of water in a local area daily, where it normally
29 doesn't exist, it could be problematic.
30
31 Q. And why would it be problematic?
32 A. Well, it can change the landscape and make things
33 heavy that shouldn't be heavy and they can fall down a
34 hill.
35
36 Q. I understand. At that time did you identify any
37 obviously source for the flowing water?
38 A. No, no, no.
39
40 Q. Had there been any major rain events in McCrae in the
41 lead-up to the 14 January landslide?
42 A. Not that I can recall. Sorry, I don't live in McCrae,
43 but I didn't know --
44
45 Q. You hadn't heard of a major rain event?
46 A. No.
47

1 Q. Did anyone else at the meeting tell you the source of
2 the water?
3 A. No. Everybody was trying to answer - well, ask the
4 council if they could tell us anything or anybody else that
5 was on the stage can they tell us, but there was no comment
6 at all.
7
8 Q. I understand. So a few days later on 19 January your
9 friend Phil, who lives near the family property, sent you
10 photos of a flyer from South East Water?
11 A. He did. Phil was one of the people who walked past
12 and he asked me if he could help, and he said he'd collect
13 the mail for me, which was appreciated. So he was keeping
14 me informed of what was happening, and he sent the flyer
15 through.
16
17 Q. I see. And do you recall that flyer being entitled,
18 "Community update" dated 17 January 2025?
19 A. That's correct.
20
21 Q. And it had been left in local residents' letterboxes?
22 A. Yes, there was a letter-drop.
23
24 Q. And do you recall that the update stated, amongst
25 other things, that South East Water was investigating
26 customer reports of water leaks in McCrae?
27 A. Yes.
28
29 Q. Do you recall that the flyer also stated that South
30 East Water had taken water samples to determine the source
31 of the water?
32 A. I do.
33
34 Q. And the flyer also said that preliminary data from
35 these tests indicate that the water is not from South East
36 Water's network?
37 A. That's right.
38
39 Q. Now, around that time did you see another statement
40 published by South East Water?
41 A. I was on the South East Water website trying to get
42 updates because all - the council, everybody had a website
43 and trying to keep people updated. So I thought that was
44 great. And I went on there. And I recall, if I'm correct,
45 that it said that there were four water tests carried out
46 in the local area and that they had - the results of that,
47 they had low chlorine and fluoride and hence it was not -

1 probably, I should say, not South East Water mains network.

2

3 Q. When you say the tests were taken in the local area
4 what did you understand that to mean?

5 A. Well, I thought it was up hill where that water was
6 bubbling out. I thought it was around that area, because
7 water mains would have had to have been excluded.

8

9 Q. I see. And when you read the statement that the test
10 results indicated that the levels of chlorine and fluoride
11 were low what did you think about that?

12 A. I had a degree of comfort. However, I do know that it
13 could be - chlorine can reduce if it travels a long way
14 and, if we haven't actually established where the leak is,
15 then perhaps it would be less than what was expected.

16

17 Q. I see. And were you comforted because it suggested
18 that the water hadn't come from a water main?

19 A. I was comforted that South East Water had checked
20 their infrastructure and that it wasn't a fault.

21

22 MS KITTIKHOUN: I see. Madam Chair, I see the time.
23 Would now be a convenient time to take a break because I'm
24 about to move on to a different topic?

25

26 CHAIRPERSON: Yes. We can break now and we'll return at
27 20 to.

28

29 **SHORT ADJOURNMENT**

30

31 MS KITTIKHOUN: Thank you, Mr Hutchings. We've just
32 finished hearing from you about your response to the test
33 results in South East Water's flyer. Could I now turn to a
34 new topic. I can imagine that the McCrae landslide was a
35 huge source of stress for your family?

36 A. It was and is.

37

38 Q. And why was it a huge source of stress for you?

39 A. Just the - we had put a lot of effort into the house
40 and we were really planning for the sale, as I mentioned
41 earlier. The mother-in-law loves the place she's in. We
42 would like her to stay there. But of course the financial
43 burden is now an issue because we can't sell the house.
44 And we're not sure when we will be able to get it because
45 there's no one giving us any remedies at all of which way
46 forward. So we just don't know where this is going to end
47 up. But she won't be able to afford to stay in that aged

1 care. So it's a concern for the whole family.

2

3 Q. I see. And so, due to those concerns, your thoughts
4 about the landslide would have been quite extensive and
5 consuming?

6 A. Yes.

7

8 Q. And did you want to identify the possible source or
9 sources of the water that you had observed?

10 A. I thought it was odd that the water was acting in that
11 way. And, yes, I couldn't sleep at night et cetera and nor
12 could my wife. And, yes, so I decided that it was worth
13 trying something else.

14

15 Q. Trying something else in terms of trying to locate
16 where that water was coming from?

17 A. Indeed

18

19 Q. And so did you reason that the unexplained water had
20 to come from a higher source on Arthurs Seat hillside?

21 A. Yes, because South East Water had clearly said and
22 I believed them, and still do, I don't think there was too
23 much of a problem in that local area. But when you get an
24 odd problem like this you've got to look way outside of
25 the local area to see if there was anything that's
26 significant could affect that water table.

27

28 Q. I see. And did you think that the water had come from
29 a higher source because it had pressure?

30 A. It was the only - South East Water had turned the big
31 tank off; took that out. The mains weren't fouling. So
32 over the hill was the next avenue I think was worth having
33 a look at.

34

35 Q. And over the hill you mean by on the other side of the
36 Mornington Peninsula Freeway?

37 A. Correct.

38

39 Q. I see. So you focused on areas higher up on
40 Arthurs Seat hillside for sources of water and you
41 identified two sources, potential sources?

42 A. I did. I got up rather early one morning. I couldn't
43 sleep, so I started looking at maps - just Google Maps,
44 Apple maps, Google Earth, everything - to see what was in
45 the surrounding area. And there were two things that
46 popped out instantly. One was the dam in Seawinds, which
47 is a Parks Victoria park.

1
2 Q. Yes.
3 A. And I had never been there, but I saw that there was a
4 dam up there. And there was a stormwater retarding basin
5 in the boulevard in McCrae.
6
7 Q. I see. Perhaps before I ask you further questions,
8 Mr Hutchings, it might be helpful to get our bearings by
9 reference to a map. If we could please go to Mr Hutchings'
10 statement, which is RES.0011.0001.0001, and then
11 specifically page 8 of that statement. Could we please
12 magnify the map at the bottom of that page. Mr Hutchings,
13 is this a map that you - sorry, first of all, is this a map
14 of part of the Arthurs Seat hillside?
15 A. Yes.
16
17 Q. And you prepared this annotated map?
18 A. I did.
19
20 Q. And the dam within Seawinds Gardens that you had just
21 mentioned, is that circled there in the pink text or line?
22 A. Yes.
23
24 Q. Thank you. So near the bottom right-hand corner?
25 A. Where the red dot is.
26
27 Q. And the stormwater storage basin that you've just
28 mentioned that's circled in red on the map?
29 A. Yes, it is.
30
31 Q. In the boulevard there?
32 A. Correct.
33
34 Q. So on 21 January did you drive to Arthurs Seat with
35 your wife, Margaret?
36 A. I did.
37
38 Q. And you wanted to inspect these two sites?
39 A. I did.
40
41 Q. And you first visited the dam at Seawinds Garden?
42 A. Yes.
43
44 Q. What did you see at the dam?
45 A. Once we parked the car and found the dam, I went to
46 the embankment of the dam. I thought that - I didn't think
47 the dam had failed. I thought had they released water.

1 Victoria's very good at managing dams. But I didn't know
2 whether there was a release of water, and that might
3 explain that volume of water getting down the hill. But
4 I walked around it. I found there was - to the left-hand
5 side I think, if I have my bearings right, there was a
6 footbridge, obviously a walkway, and it looked like a
7 spillway that went off downstream. And I thought this
8 would be the spillway if there was any liquid released, but
9 it was bone dry; absolutely dust.

10
11 Q. So, given that it was dry, did you conclude at that
12 point that this dam could not account for the continuous
13 flow of water on Charlesworth Street?

14 A. Yes, yes, if I found wet soil or evidence of recent
15 flows. But even the vegetation was upright.

16
17 Q. So very dry. And, after that, you drove with your
18 wife to the stormwater storage basin in the boulevard?

19 A. I did.

20
21 Q. And your wife remained in the car while you continued
22 your investigations?

23 A. She did. Yes.

24
25 Q. And why did you want to look at the stormwater storage
26 basin?

27 A. Well, it was a rather large basin and the flow from
28 that side of the hill would end up in that basin, if I'm
29 correct. Again, I'm an amateur. So I looked at Google
30 Earth and tried to get a 3D view, and it looked like that
31 was the way that the water would take its flow.

32
33 Q. I see.

34 A. So my suspicion was that, if this is full of water and
35 hadn't flowed for a while, I don't think the base would be
36 lined with clay or something, it more likely would just
37 sink into the soil, and therefore make its way across. But
38 I actually got out of the car and walked from close to the
39 Bayview Road section, I walked right across that basin, and
40 it was bone dry.

41
42 Q. Bone dry again?

43 A. Yes.

44
45 Q. And what did you conclude at that point after making
46 that observation?

47 A. That wasn't the source of water either.

1
2 Q. I'm sorry, I should have asked you earlier when you
3 said "across" you meant if there had been water flowing it
4 would have flowed across the freeway?
5 A. Well, it would have gone under the freeway, yes, but
6 still recharged the water table.
7
8 Q. I see. So, having observed two sites that were bone
9 dry, how did you feel at this point?
10 A. I was a little disappointed, really. But,
11 nevertheless, that's the facts. So I then chose to move
12 on.
13
14 Q. I see. And you headed back to your car; is that
15 right?
16 A. I did, but my wife had moved it because she thought
17 I was coming out of the other side. So I then went
18 looking, and I found her located on the corner of Outlook
19 Drive.
20
21 Q. On Outlook Road?
22 A. Outlook Road.
23
24 Q. So the corner of Outlook Road and Bayview Road; is
25 that right?
26 A. Yes, correct.
27
28 Q. And what did you see when you approached your car?
29 A. I was walking towards the car and I see there was a
30 gentleman talking to my wife through the driver's window.
31
32 Q. Did you speak to that gentleman?
33 A. I did.
34
35 Q. Did you find out who he is or where he lives?
36 A. My wife suggested I speak to him because he had some
37 interesting facts. And I did. I spoke to him and he
38 started to tell me that there was quite a bit of activity
39 on New Year's Eve --
40
41 Q. I see.
42 A. -- in the park opposite him.
43
44 Q. Before you proceed, where does this person live?
45 A. On the corner there at 31.
46
47 Q. 31 Outlook Road?

1 A. Correct.
2
3 Q. So you've introduced yourself to the owner of
4 31 Outlook Road, and he told you there was a bit of
5 activity. Could you explain what you mean by that?
6 A. He was saying that there was a water mains burst in
7 the area on New Year's Eve.
8
9 Q. I see. The water main burst on New Year's Eve or --
10 A. Repair.
11
12 Q. The repair was conducted, I see. And did he know
13 about this burst water main prior to New Year's Eve?
14 A. He did not.
15
16 Q. Did he describe what the scene of the repair looked
17 like?
18 A. He gave me an indication of where this - I should
19 look. He did state that there's a rather large excavation
20 just on the other side of the car, close to the road. And
21 he said that was not fruitful. They were looking for the
22 main to put a valve in - he seemed quite knowledgeable,
23 actually - to put a valve in, and they couldn't find the
24 water main. So they gave up. And it was refilled and
25 there was grass seed. He told me to proceed further down.
26 He said, "It gets quite thick bush there, but they've
27 cleaned up since the repair work in that area."
28
29 Q. So I can understand, we're referring to that area that
30 is between Bayview Road and Outlook Road, where that yellow
31 dot is?
32 A. The yellow dot is the area that he was referring to.
33
34 Q. I see. And that yellow dot is what we might call the
35 burst site?
36 A. Correct.
37
38 Q. And that was the first time you became aware of a
39 water burst near Outlook Road?
40 A. It was.
41
42 Q. Did you walk down to the burst site?
43 A. I did.
44
45 Q. To be more specific, would you say that the burst site
46 is about 40 metres away from the corner of Bayview and
47 Outlook Road?

1 A. Approximately 40 metres, yes.
2
3 Q. What did you see when you got down to the burst site?
4 A. Well, I saw there was some repair activity and the
5 grass seed, new soil et cetera. And there was also a fence
6 was missing on the side. And some tape, warning tape, et
7 cetera, identification tape. So there had been something
8 happening there some - and I didn't know - it was supposed
9 to be New Year's Eve, but I didn't know if people had been
10 back et cetera.
11
12 Q. I see. So the ground looked like it had been
13 excavated?
14 A. Yes, and typical - and in fact the chap that was
15 talking to me at the car said it had been excavated as
16 well. There was a large truck, as he explained it. And
17 I asked him the description of that truck and I presumed it
18 was an NDD truck, non-destructive digging truck.
19
20 Q. I see. And when you were at the burst site was it wet
21 at the time?
22 A. No.
23
24 Q. Was there evidence of water flows in the area?
25 A. There was on the other side of the fence. You could
26 see - I've seen a lot of burst mains and a washout. It
27 strips the topsoil off and damages the plants et cetera.
28 So it was quite evident. But I didn't know how far it
29 went.
30
31 Q. I see. So at that point in time you observed that an
32 area had been excavated, presumably for a repair, and that
33 there had been significant water flow given what you
34 observed beyond the fence?
35 A. Correct.
36
37 Q. On the next day, on 22 January, did you attend another
38 meeting of local residents at Dromana Hall?
39 A. I did.
40
41 Q. And were two representatives from South East Water
42 present at that meeting?
43 A. Yes.
44
45 Q. What are their names?
46 A. Lara Olsen, who is the MD, and Tim Lloyd, who is the
47 operations manager. I'm not sure of his actual title.

1
2 Q. So MD you mean managing director?
3 A. Yes, sorry.
4
5 Q. At that meeting did Mr Lloyd advise residents that
6 South East Water had reviewed its water network?
7 A. He did.
8
9 Q. And what did he say about the network?
10 A. He indicated it was performing well.
11
12 Q. Yes.
13 A. And they were doing checking; similar to what was in
14 that newsletter. They had shut the tank down et cetera.
15 So he was giving a degree of comfort, I think, to the
16 people, and there was no reason to believe otherwise.
17
18 Q. I see. And when Mr Lloyd said that the network was
19 performing well what did you understand that to mean?
20 A. Because we were talking about water so much I just
21 presumed that - South East Water usually loses about
22 10 per cent of its water through leakage, approximately.
23 And I thought perhaps it may be 8 or 7. They may know that
24 data. So a degree of comfort. Everyone would like it to
25 be zero, but that's technically not possible.
26
27 Q. I understand. Did anyone tell you at that meeting the
28 potential source of the excess water observed in McCrae?
29 A. No.
30
31 Q. Did you have a conversation with Mr Lloyd and Ms Olsen
32 at that meeting?
33 A. I did, very brief conversation. When I first arrived
34 Lara came up to me. I had met Lara before. And, after
35 pleasantries, I asked her if we could accelerate digital
36 metering into the area as soon as possible because that
37 would assist going forward. And she said, "We're already
38 going to do that." And that was great.
39
40 Q. Could you explain what digital meters do?
41 A. Digital meters are a wonderful piece of technology as
42 far as I am concerned, but they will actually - they
43 replace the typical brass meter that everybody is used to.
44 They're plastic but they've usually got a communication
45 chip inside as well. And it will take 48 readings a day.
46 And it has properties - some of them, not all of those
47 meters, I think South East Water call it Sotto, but it's a

1 piece of technology that I think is a world first,
2 actually, but that actually can hear acoustic signatures.
3 So every leak has an acoustic signature; it makes a noise.
4 And these meters, if you place that technology, say, in
5 every four houses, 10 houses, whatever the engineers
6 decide, those meters can correlate. So they'll actually
7 say, "I've got a noise and I think it's at 32 metres." And
8 this one might say, "I've got a noise as well and I think
9 it's 64 metres." That tells you that you've got a leak on
10 that pipe or even a service, if possible.

11
12 Q. I see. So you suggested digital meters be installed
13 in the McCrae area to help potentially isolate the source
14 of the leak?

15 A. Just give a degree of comfort to the individual.
16 I know South East Water has a budget to install them,
17 I think on a million properties if they're planned
18 property. But it's great technology. And they're rolling
19 it out really quick. And they've kept their word. They've
20 done it. They've started rolling out as we talk. They
21 also detect leakage in the property, which is as important
22 because if you get a leak you'll see it on - every day you
23 can read these meters.

24
25 Q. I see. Can I take you now to 25 January 2025. On or
26 around that day did your friend Phil contact you?

27 A. Yes, he did.

28
29 Q. And did he tell you that he had made a report to South
30 East Water?

31 A. Yes, he did.

32
33 Q. Do you recall him making a report about unnatural or
34 unusual flows of water on Charlesworth Street?

35 A. Yes, my understanding was he made a report about
36 leakage.

37
38 Q. I see. And did Phil tell you when he first noticed
39 those flows of water on Charlesworth Street?

40 A. He sent me a picture of the form, and I actually saw
41 the date on there as 24th.

42
43 Q. Sorry, just to clarify, the form, are you referring to
44 a response from South East Water?

45 A. Correct.

46
47 Q. And that was dated 24 November?

1 A. It was.
2
3 Q. And do you recall the response saying, amongst other
4 things, that South East Water required further information
5 to assess if there is a leak coming up through the road?
6 A. Yes.
7
8 Q. And the response also stated that South East Water has
9 no water assets in the location?
10 A. Yes.
11
12 Q. Did Phil respond to South East Water's response?
13 A. No, he didn't.
14
15 Q. And why is that?
16 A. He knew that other neighbours were ringing or sending
17 snaps or whatever they send now. But he said there's
18 enough people onto them.
19
20 Q. So neighbours were also reporting the unnatural water
21 on Charlesworth Street to South East Water?
22 A. That was my understanding.
23
24 Q. Mr Hutchings, I'm now going to turn to some questions
25 about the McCrae Evacuees Residents or Response Group,
26 which I understand is called MERG. I will refer to that as
27 MERG from this point forward. Was MERG formed in late
28 January 2025?
29 A. It was.
30
31 Q. And was it formed to enable residents to share
32 information and provide mutual support to one another?
33 A. It was.
34
35 Q. Did the first meeting of MERG occur on or around
36 28 January 2025?
37 A. Yes.
38
39 Q. Was a meeting held at the McCrae Yacht Club?
40 A. It was.
41
42 Q. Did John Bolch, a local resident of McCrae, also
43 attend that meeting?
44 A. He did.
45
46 Q. And you had met John a few days earlier?
47 A. I did.

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Q. And you learned that he is a commercial plumber with extensive experience in water mains?

A. Yes.

Q. Mr Hutchings, do you recall what was discussed at that first meeting of MERG?

A. It was really - remember, many of these people in the room don't know each other and then brought together because of this incident. Some did, but many didn't. And it was about allocating resources. The media were making enquiries. Council needed to be - have interface with council meetings set up. Who was going to deal with the finances, correspondence? So people were given responsibilities, sometimes voluntarily, but they were given responsibilities to go and chase things up.

Q. And was there any discussion about finding out answers about the cause of the landslide?

A. Yes. That was one of the top topics is, "How do we stop the water coming out?"

Q. And could you provide any further details about that discussion?

A. There was and it was allocated - or the responsibility was allocated to John and I because of our history, our background.

Q. Your professional backgrounds in water?

A. Yes.

Q. So John and you were tasked with finding out where the water flowing near the Morans' property was coming from?

A. At least try. We're two amateurs walking around the streets asking people questions, but at least trying to establish, "Is there something that we've missed?"

Q. I see. So since the end of January to date you've worked independently and at times with John to investigate the unexpected flows of water in McCrae --

A. Yes.

Q. -- and their impact on the landslides. I'm now going to ask you a few questions, Mr Hutchings, so you can expand on and explain that work. Can we start on 7 February. On that day you took various photos at different locations in McCrae; is that right?

1 A. Correct.

2

3 Q. If we could go to exhibit 9 to Mr Hutchings' statement
4 which is RES.0011.0001.0010. Here we go. All right,
5 Mr Hutchings, this is a photo that you took at the
6 intersection of Waller Place and Charlesworth Street; is
7 that right?

8 A. Yes.

9

10 Q. You took this photo on 7 February?

11 A. Yes.

12

13 Q. And this is the same intersection that you'd filmed on
14 the day of the 14 January landslide?

15 A. It is.

16

17 Q. Could you describe what you observed at this
18 intersection on 7 February?

19 A. Yes. Well, obviously it's been repaired, and there
20 were two sections there that have been repaired. What
21 I was surprised at was actually to see it repaired, because
22 the water - last time I visited that there was water
23 flowing. So I thought that was quite interesting because
24 obviously it's the first indication that we've got of
25 somewhere where we knew there was water now starting to
26 reduce to a level where they could actually do road
27 repairs. And I then walked up and looked at the nature
28 strip that previously was leaching water out of it, and
29 I could stand on it. And I thought, "That's interesting.
30 So it's starting to dry out in this area."

31

32 Q. I see. And if we could please go to the next exhibit
33 to your witness statement, exhibit 10, which is
34 RES.0011.0001.0011. This is a photo that you took on
35 7 January at the Coburn Avenue and Charlesworth Street
36 intersection; is that right?

37 A. It is.

38

39 Q. Could you describe what you observed at that
40 intersection that day?

41 A. Well, the water was still flowing. So, again, I've
42 only taken rough levels of either the South East Water
43 assets or the contours I can get, and they're not that
44 accurate. But it's approximately five metres lower than
45 the hole - than the road repair area that we've just seen.
46 And I think it might be 80, 90 metres down the road; I'm
47 not sure. But that was still flowing water. So I thought,

1 "Well, the table now has obviously - water table, if I'm
2 correct in my theory here, is that the water's reducing and
3 going down. This is slowing down. Hopefully in the near
4 future this dries up. And that will give us the rate of
5 reduction per metre over how many weeks."
6

7 Q. I see. I misspoke earlier; I should have said
8 7 February, not January.

9 A. Yes.

10

11 Q. Now, some time in early to mid-February 2025 did you
12 and John go walking around Charlesworth Street and Waller
13 Place as part of your investigations into the source of
14 the water?

15 A. Yes. Sorry, if I may?

16

17 Q. Yes, of course.

18 A. I just want to point out something else in this photo.
19 Because we're talking are the sewer trenches possibly an
20 avenue, the sewer trench doesn't go to the other side of
21 this picture, yet the water was flowing over there. So
22 some of the concept is it may have overspilled and just
23 gone out of this trench as well.
24

25 Q. Could you explain what you mean by the other side?

26 A. The other kerb, because that's actually damaged as
27 well and started flowing. It originally wasn't. So this
28 happened first, this near - the nearer hole. The other
29 side, water started coming out on the other side of the
30 road as well.
31

32 Q. And when did that occur?

33 A. It was within weeks of that first one happening.
34

35 Q. I see.

36 A. They were both deteriorating in two spots.
37

38 Q. I see.

39 A. And that's why the whole road's closed previously. It
40 was just cones around this one.
41

42 Q. I see. And so just to take you back to the middle of
43 February now when you and John go walking around
44 Charlesworth Street. Did you find a grated stormwater
45 drain outside the front of 5 Waller Place?

46 A. We did.
47

1 Q. And what observations did you make in relation to that
2 stormwater drain?
3 A. Well, it had flows but - yes, it had flows in there
4 which was interesting but not super interesting. It was
5 low flow.
6
7 Q. Low flow?
8 A. Yes. And, because the weather had been so dry, there
9 shouldn't be any flow. But there was.
10
11 Q. I see.
12 A. But I didn't get too concerned about that. We had
13 some rough maps about where all the connections are. So,
14 yes.
15
16 Q. I see. And shortly afterwards observing this drain
17 you spoke to the owner of 5 Waller Place, Brett?
18 A. Correct.
19
20 Q. And before I proceed again it might be helpful to
21 bring up a map to get our bearings. Could we please have
22 up Mr Hutchings' statement, which is RES.0011.0001.0001,
23 and go to page 12. Could we please magnify that map?
24 Thank you. Mr Hutchings, could you please point to where 5
25 Waller Place is on that map?
26 A. It's the property that - if you look at the red dot,
27 it's the one immediately to the left.
28
29 Q. And could you please point to the grated stormwater
30 drain you've just mentioned, the drain outside the front of
31 5 Waller Place?
32 A. That's the one in the yellow.
33
34 Q. I'll now bring you back to your conversation with the
35 owner of 5 Waller Place, Brett. What did you say to Brett
36 when you first met him?
37 A. Well, he approached us because he might have thought
38 about the two gentlemen who were looking over his garden
39 fence, which was handy because he come and actually spoke
40 to us. And I introduced myself, and so did John, and we
41 were just telling him where we were from and the reason we
42 were there. And he then started to talk to us about the
43 flows that he's witnessed as well in the drains, in the
44 local drains. And it was the first connection - because we
45 knew this reserve was there and we knew the stormwater was
46 coming through. And full credit to VicRoads, who gave us
47 the plans et cetera, and they're very good detail. So

1 that's how the connection happened. He appeared and told
2 us that he had high flows.
3
4 Q. I see. Just before I ask about that, what did you
5 tell Brett was the reason for your presence on --
6 A. We were trying to establish where all this water was
7 coming from in the streets around Waller and Charlesworth.
8
9 Q. I see. And you mentioned that he talked about water
10 flow. Could you please tell us a little bit more about
11 what Brett told you?
12 A. He said he's got a pit at the rear of his property.
13
14 Q. Could you point to that on the map?
15 A. That's the one circled in red.
16
17 Q. Yes.
18 A. And I hadn't seen that pit, but I knew of its location
19 through the mapping that we had from council and VicRoads.
20 And we knew that two 750 mains were underneath the freeway
21 - sized stormwater pipes coming down there.
22
23 Q. And so those pipes feed into that pit there that's
24 circled in red?
25 A. They do. They come down and out. Because they're at
26 an angle they drop - they might drop over 10 metres going
27 through the freeway. They come down and they obviously hit
28 the pit before shooting along to the - and that's 675 mm
29 going across that pipe there through his property.
30
31 Q. I see. And did Brett tell you that there was a lot of
32 noise that was being caused by a large volume of water
33 flowing through the pit at the back there of his property?
34 A. He did.
35
36 Q. And did he tell you that before Christmas in 2024 he
37 saw South East Water investigating their assets for leaks
38 at the rear of his house?
39 A. Yes.
40
41 Q. And did he tell you that he told South East Water to
42 look on the higher side of the freeway, that is the
43 southern side, for the leak?
44 A. Yes, he indicated, "You should be over there."
45
46 Q. And did Brett tell you that on Christmas Day he went
47 to the burst site and noticed that the ground was

1 completely saturated?

2 A. Yes.

3

4 Q. And once you heard all of this, Mr Hutchings, did you
5 start to connect the dots between the various pieces of
6 information that you had gathered?

7 A. Yes. So our views were starting to firm that this -
8 we could be talking about the same incident, all this water
9 happening, and perhaps the burst may have provided the
10 source of water. We didn't really know any length of time,
11 because we knew it was called in on the 24th.

12

13 Q. Yes, that was the report.

14 A. That's right. So we're looking to New Year's Eve. So
15 we're saying, "That's a fair time to have water running."
16 And I questioned about how long that main was running
17 up the - nobody knew this of course; we didn't know. So
18 I presumed that this would have been a possible source of
19 the water and worth exploring further.

20

21 Q. So would it be fair to summarise what you've just said
22 that you thought that the water emanating from the burst
23 side may have travelled across the Mornington Peninsula
24 Freeway and then through this stormwater pit and along that
25 stormwater pipe running parallel to Brett's house and
26 causing all that noise?

27 A. Yes.

28

29 Q. And did you have a sense of how that water might have
30 travelled? Did you think it was trench flow or ground
31 saturation?

32 A. Well, the noises that he was hearing was the water
33 rushing into the drains that are upstream. So this is
34 stormwater only, but is an indicator that clearly there's a
35 lot of water up there somewhere. Because you don't get
36 that just by a garden hose. You get it by a severe amount
37 of water. And we hadn't formed how much water would flow
38 at that stage.

39

40 Q. I see. And at that stage did you think that
41 potentially the water had travelled to Charlesworth Street
42 from that location?

43 A. Yes.

44

45 Q. That location being Waller Place?

46 A. Because if it was coming down the trench of the sewer,
47 which runs - I think it runs to the right of that green

1 line, it does a right - when it gets to outside number 5 it
2 does a right-hand turn. And that kind of coincided with
3 why it is - why is the right-hand side of the nature strip
4 just dripping wet, trucks were sinking in there, but the
5 left's bone dry.

6

7 Q. I see.

8 A. It just didn't make sense. And the only asset that
9 runs down there is the sewer. So that's why we started to
10 think, "Is it possible that it's trench flow?"

11

12 Q. I see. Mr Hutchings, I'm going to come back and ask
13 you more questions about the path of water flow but, before
14 I do that, can I ask you some questions about the burst
15 site itself.

16 A. Yes.

17

18 Q. So throughout February you visited the burst site on
19 multiple occasions; is that right?

20 A. Correct.

21

22 Q. And have you taken multiple photos and videos at that
23 site?

24 A. I have.

25

26 Q. And on 27 February you took three videos of the burst
27 site; is that right?

28 A. I did.

29

30 Q. If we could please go to exhibit 12 of Mr Hutchings'
31 statement which is RES.0011.0001.0013. Mr Hutchings, I'll
32 just ask as the video is playing could you please explain
33 your observations at the burst site and in particular could
34 you please indicate to Madam Chair where you think the
35 water main burst? Could the video please be played?

36 A. Yes. The water main burst site is in the centre of
37 the photo at the moment, and the sewer is very close. And
38 that was another reason for us taking the video. And this
39 is where the repair was. And we can see the webbing on the
40 fence. Where we're looking up there now is where the main
41 runs up. This is to the area - behind this area is the
42 area that's sodden, was wet. But these are really big
43 brambles and there's a lot of them around there, and
44 I think that they had been cleared for this exercise. So
45 this would have been particularly difficult to find, this
46 burst.

47

1 Q. I see.

2 A. And this is just poking overlooking inside. And you
3 can see there's fallen trees. That's another indication
4 that the ground is saturated. For a tree to fall over,
5 it's very wet.
6

7 Q. I see. If we could next go to exhibit 13 of
8 Mr Hutchings' statement, which is RES.0011.0001.0014.
9 Mr Hutchings, can you please explain where this video was
10 taken and, as the video is playing, again narrate your
11 observations?

12 A. I have just now stepped into the area behind the burst
13 site there, behind the fence. And as you circle around you
14 can see the amount of what I'd call devastation, because
15 all that would have been vegetated, and the water has
16 ripped the plants from the soil or the soil's been washed
17 away; it can be either. But there are indicators on the
18 trees that the soil or the water was higher than what it is
19 now. So you can see it was quite extensive. And I was
20 surprised by this. I wasn't expecting to see such a large
21 area.
22

23 Q. I see. Could we please go to exhibit 14 of
24 Mr Hutchings' statement which is RES.0011.0001.0015.
25 Again, Mr Hutchings, can you explain where this video was
26 taken and your observations?

27 A. It's again in the same area of the burst site. You
28 can actually see the markers on the tree where the - in my
29 view. This is, again, an amateur speaking here. But there
30 are indicators of where the soil was and where it's no
31 longer there. And you can see where the water's gone down,
32 right down, into the tree roots et cetera. There's a
33 classic example of the depth of material that's been
34 removed through water flow.
35

36 Q. Mr Hutchings, how long do you think the ground at the
37 burst site had been wet prior to the January landslides?

38 A. Well, we know it has to travel to that area on
39 Charlesworth. So that's going to take some time to get
40 there. And we calculated that. And, again, extremely
41 roughly but we calculated it around about two weeks. So,
42 if it was the 24th yet people said it was one or two weeks
43 earlier, we're talking mid-November, by that time. If we
44 say the two weeks for the flow to come through either the
45 trench or the soil or whatever, it would have had to have
46 been at the beginning of November; minimum. But we don't
47 know. And that's why I asked - there was other people

1 getting freedoms of information. I said, "It's very
2 important to find out when the call was actually first
3 recorded if a customer had found this."
4

5 Q. I see. So, given the base of information that you
6 currently have, you estimate that this burst site may have
7 been wet from as early as the start of November?

8 A. 1 November, I'd say.
9

10 MS KITTIKHOUN: Madam Chair, I note the time. I should be
11 done by 4.35.
12

13 CHAIRPERSON: Let's keep going.
14

15 MS KITTIKHOUN: Mr Hutchings, I'm now going to ask you to
16 explain the burst water main theory but, before I do, could
17 I ask exhibit 15 of the statement to be brought up on
18 screen, which is RES.0011.0001.0016, and specifically
19 page 2 of that PDF. Mr Hutchings, is this an aerial map of
20 McCrae?

21 A. It is.
22

23 Q. And did you obtain the original map from SEW map?

24 A. I did.
25

26 Q. And what do the red lines on this map show?

27 A. They show the sewer lines.
28

29 Q. And what about the blue lines?

30 A. The water lines.
31

32 Q. Did you annotate this map with the coloured symbols?

33 A. I did.
34

35 Q. And where is the burst site on that map?

36 A. The yellow point.
37

38 Q. The yellow point towards the right-hand corner?

39 A. Correct.
40

41 Q. And where is the site of the 14 January landslide?

42 A. The red slide.
43

44 Q. Towards the top left-hand corner?

45 A. The red oblong, yes.
46

47 Q. And can I ask you what is the significance of those

1 two orange triangles?

2 A. That's where we've shown photos of the road damage.
3 So that was where the water was coming through the roads,
4 Charlesworth and Waller, and Charlesworth and Coburn.

5

6 Q. The two intersections?

7 A. Correct.

8

9 Q. Could you please explain to us how you think the burst
10 water main may have played a role in the 14 January
11 landslide?

12 A. Well, the water has to leave that site by some means
13 or mechanism. It's either through the trenches or through
14 just total ground saturation and gone across the other
15 side. The trenches to me makes part sense but, again,
16 there are experts that will be able to determine this. May
17 I point to the screen?

18

19 Q. Of course you can?

20 A. Is it okay --

21

22 CHAIRPERSON: You can leave the witness box, yes.

23 A. So what we see here is the sewer running across, and
24 we've got the stormwater easement as well. So here is the
25 sodden area behind the burst site. So that's not towards
26 the drains. There are no drains that they would be able to
27 flow out of, in my opinion. So we're saying the trench
28 goes across. This is where number 5 heard the noise at the
29 back of his property. This is where the drain was roaring
30 at the front of the property in Waller Place. This is the
31 property that was saturated and complaining about fences
32 et cetera being wet. And the nature strip was completely
33 saturated and rolling into the road. So it doglegged, and
34 that would be unusual, I would have thought. So, again,
35 the road damage here on top of the sewer.

36

37 And then down here the nature strips were leaking
38 along here as well. And this block in particular was
39 really wet. There's a video of a person treading on there
40 and his feet are actually going through the soil. And then
41 it come out across the other side. This is where I say the
42 sewer is here. If it was this, it would have to leave the
43 sewer trench. But it come out - we believe we've got video
44 of here, this one being wet.

45

46 But, over here, this house has an agi system running
47 through the front lawn and it was flowing like crazy. So

1 it was really elevated flows coming from this particular
2 house. And it was very damp in this bottom corner. And
3 you could get - this is quite an unusual drain because
4 there's a legacy system there where it's higher. So it's
5 not hard to actually look in it and you can actually see
6 the water coming out. And in some cases it was a kind of
7 milky colour.

8
9 Interestingly, this trench across here for the sewer
10 has got a noticeable dip in it now, and residents are
11 telling me it wasn't there previously. That is a classic
12 sign that there has been water flowing through a trench
13 because it washes what they call the fines out,
14 settlements, and it sinks. And of course I don't know how
15 it got to the burst site. I don't know.

16
17 Q. I see. So just for the transcript, Mr Hutchings, you
18 suspect that the water from the burst water main at that
19 yellow point then travelled along the line of those blue
20 water symbols down towards the landslide site?

21 A. It's possible. And it's not - you know, people
22 shouldn't think that it's a trench and that's as much water
23 as it is. There's a plume around that trench. It goes
24 left, right and down as well. So it's not just a trench
25 full of water. It gets saturated over time and that
26 spreads. So it could be - unless you had instruments in
27 the ground, you'd never find where the actual water was
28 flowing. It could take many routes.

29
30 Q. So is it fair to say then that you think the water may
31 have travelled along the trenches as well as through ground
32 saturation?

33 A. It could well have done.

34
35 Q. Okay. Mr Hutchings, have you and John shared the
36 burst water main theory with the Mornington Peninsula Shire
37 Council?

38 A. Yes. We invited council to attend and we were willing
39 to walk them all the way through.

40
41 Q. And what day did that - did you go for that
42 walkthrough?

43 A. I think that was on 7 March.

44
45 Q. And who was present during that site visit?

46 A. There were several council members, including Mr Pope.
47 We asked - in fact we insisted Mr Pope join us because

1 obviously he was involved at the landslip. But, yes.

2

3 Q. Yes. So members of the council as well as John and
4 you attended the burst site on 7 March. On that day was
5 the burst site wet again?

6 A. It was.

7

8 Q. Where was the ground wet?

9 A. It was actually wet around the same pipe that had
10 previously been repaired.

11

12 Q. And what did you think when you saw that wet ground?

13 A. I thought it's another leak.

14

15 Q. I see. And, to date, has the council informed you of
16 any actions it has taken after learning of the burst water
17 main theory?

18 A. No.

19

20 Q. Now, I want to take you to 18 March. On that day was
21 the damage road at the intersection of Coburn Avenue and
22 Charlesworth Street repaired?

23 A. Yes, I believe it was.

24

25 Q. And since the repair to the Coburn and Charlesworth
26 intersection have you returned to McCrae? Have you
27 returned?

28 A. Yes.

29

30 Q. And have you observed anything since the repairs
31 occurred at that intersection?

32 A. The road repairs; it's dried out.

33

34 Q. It's dried out?

35 A. Yes.

36

37 Q. Are there any signs of running water or water leaking
38 from the road at that intersection?

39 A. No.

40

41 Q. Are the nature strips near the intersection wet?

42 A. No.

43

44 Q. Now, on 29 April 2025 you received a report from
45 Daniel Tolan, a geotechnical engineer from CivilTest; is
46 that right?

47 A. Correct.

1
2 Q. And you had commissioned that report on behalf of
3 MERG?
4 A. Yes.
5
6 Q. Did you ask Mr Tolan to review information provided by
7 MERG?
8 A. Yes.
9
10 Q. And to examine topography and contour maps?
11 A. Yes.
12
13 Q. And that was to test the plausibility of water flowing
14 from the burst site towards the landslide site?
15 A. Yes. We just wanted to make sure that what we were
16 saying is technically possible. We're not skilled in that.
17 So we asked for some expert advice.
18
19 Q. Yes. And did Mr Tolan do a site walkover?
20 A. He did.
21
22 Q. But he didn't conduct a hydrogeological assessment,
23 did he?
24 A. No, no. We just took him exactly on that walk.
25 Actually we walked the whole route.
26
27 Q. The whole route from?
28 A. The burst site. We were up at the burst site and then
29 we drove down to Waller and then we walked around.
30
31 Q. Walked around Waller Place?
32 A. Yes, just to show him the area.
33
34 Q. I see. To the best of your recollection, what did the
35 report conclude?
36 A. It said that it was technically possible.
37
38 Q. Possible. Mr Hutchings, at this point in time do you
39 feel that you have taken the investigations as far as you
40 can?
41 A. Yes.
42
43 Q. And why is that?
44 A. Well, I've knocked on every door, I've spoken to all
45 the people, we've gathered all the videos, we've got as
46 much as we can now. Again, technically, John and I have
47 more than likely met the limits now. So it's for others

1 and this good inquiry to establish what has happened.

2

3 Q. I understand. And so, to date, have you ascertained
4 or otherwise been informed of any other potential sources
5 of the water flows that were observed in McCrae in the
6 month leading up to the 14 January landslide?

7 A. No.

8

9 Q. The burst water main is the only plausible source of
10 water that you have identified through your work?

11 A. It's the only connection we've been able to make to
12 those wet areas, yes.

13

14 MS KITTIKHOUN: Thank you, Mr Hutchings. Madam Chair,
15 I have no further questions.

16

17 CHAIRPERSON: Thanks, Ms Kittikhoun. Does anyone else
18 have questions?

19

20 MS SIEMENSMA: I do, Madam Chair. I've spoken briefly
21 over the lunch break with Ms Kittikhoun and told her what
22 I was intending to ask, and she has no objection.

23

24 CHAIRPERSON: Thanks, Ms Siemensma.

25

26 <EXAMINED BY MS SIEMENSMA:

27

28 MS SIEMENSMA: Thanks, Mr Hutchings. I won't hold you for
29 long. As you will have gathered, I appear for South East
30 Water. Could I ask prior to 2025 had you been up to the
31 burst site before?

32 A. Prior to - no.

33

34 Q. And in paragraph 61 of your statement you discuss
35 having gone to the burst site and having a look at the
36 vegetation and the damage. And you spent about two hours
37 there. Can I ask you did you, like Mr Cooper, also go and
38 have a look at the grated stormwater drain?

39 A. I don't know whether we went together, but Mr Cooper
40 was on site. I can't remember whether we did it together
41 because we were walking in different directions et cetera.
42 But I know the drain.

43

44 Q. Yes. You were in the court room before where he
45 indicated the green grate on the document?

46 A. Yes.

47

1 Q. So have you gone to have a look at that green grate?

2 A. I have.

3

4 Q. And, like Mr Cooper, did you also based on the
5 sediment and the vegetation get the impression that the
6 water had flowed to that stormwater drain?

7 A. Yes, some water went towards that. But the flows were
8 quite extensive. So I couldn't guarantee that all water -
9 it was like a radius there. I couldn't - those drains were
10 built in 1972, and one of them is actually a thatched
11 drain, which means they've actually got thatching in them;
12 that's how it works. And they have to be maintained around
13 about two years. I don't think that place has ever been
14 maintained. So the drains that were originally established
15 there are in very poor shape compared to what modern
16 drainage would be. So I see that the drainage is a factor,
17 but the water's quite widespread and I don't know the
18 direction it went.

19

20 Q. Is it fair to say you saw some damage up to the drain,
21 some damage of vegetation and sediment --

22 A. Yes, there's no doubt about it some - there's no doubt
23 about it. Flows went down that drain, in my opinion.

24

25 Q. And just a few moments ago you were asked about
26 possible sources of water other than your theory, and you
27 set out your theory in paragraph 64 and following. If this
28 evidence of an interveningly - by that I mean hiddenly -
29 from private property in Prospect Hill Road from before
30 January 2025 to April 2025, is that something that you
31 think would be a relevant consideration and worth the board
32 inquiring into?

33 A. Yes.

34

35 Q. And, similarly, if there's a leak history for 10-12
36 View Point Road - and by that I mean leak allowances in
37 2015, 2018, 2023 - that, too, would be something worth the
38 board looking into in terms of possible water sources?

39 A. Oh, well, that's up to the board, I think. Possibly
40 so. I should stress this is a theory. We're not saying
41 this is the whole reason. This is just something to be
42 looked at.

43

44 MS SIEMENSMA: Thank you.

45

46 CHAIRPERSON: Thanks, Ms Siemensma. Mr Hutchings, that
47 completes your evidence. Thank you very much for all the

1 work you've done and for coming along today to explain it.
2 A. Thank you.

3
4 CHAIRPERSON: You're excused.

5
6 <THE WITNESS WITHDREW

7
8 MS KITTIKHOUN: Madam Chair, there are no further
9 witnesses for today.

10
11 CHAIRPERSON: Thank you, Ms Kittikhoun. Unless there are
12 any other matters, we'll adjourn until 10 am on Wednesday,
13 14 May.

14
15 AT 4.29 PM THE HEARING ADJOURNED UNTIL WEDNESDAY, 14 MAY
16 2025

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