

Our Ref: PMcG:GM:23183091
Your Ref:



12 July 2023

Claudio Flores
Mornington Peninsula Shire

Email: Claudio.flores@mornpen.vic.gov.au

Dear Claudio

**Re: Our clients: Paul and Denise Willigenburg
McCrae Landslip**

Thank you for your correspondence of 29 June 2023. Our clients have returned from holiday recently and we have had discussions.

We respectfully say that to not provide information is really an invitation for us to make an Application at VCAT that as Paul and Denise Willigenburg are the impacted parties, they are entitled to have information about the securing of their site in circumstances where there are two individuals and one collective issue relating to the Shire drainage issue and the interference with the slope works carried out by Mr & Mrs Borghesi. For the sake of full disclosure, a copy of the letter to Mr & Mrs Borghesi is attached.

You will note that the writer having endured 3 year Court cases for Graeme Hosking and Tony Gunnersen in the Daveys Bay precinct, both of which matters were complicated, expensive, litigious and time wasting. As stated in the attached letter, this is not what we wish as the outcome.

We invite you to respond within 7 days.

The writer has advised Paul and Denise that as they are the impacted party, they are entitled to receive the information as they need the comfort of knowing that the remediation is proper – which we note is part of the review process that you are undertaking.

We reserve all rights but at this point wish for full disclosure, failing which our advice is to apply to VCAT for Orders that our clients are impacted by the compromise to the slope, whatever the cause, the Shire and/or the land owner above our clients' property, are entitled to satisfy themselves that the remediation is appropriate in the view of the Geo Technical experts to be engaged by our clients. If a VCAT Application is required to be made there will be an application for costs.

This letter is in part a record to VCAT to understand that we have made every endeavour to apply a simple common sense collegiate approach to solving the problem.

12 July 2023

Please respond within 7 days. Our actions will in part depend upon the response from the neighbouring land owners.

Regards

PAUL McGUINNESS

Personal Information

McGuinness Legal Pty Ltd

Encl.

Liability limited by a scheme approved under Professional Standards Legislation

Our Ref: PMcG:GM:23183091
Your Ref:

EMAILED

12 July 2023

Gerry and Bronwyn Borghesi

Email: **Redacted**

Dear Gerry & Bronwyn

Re: McCrae landslip
Our clients: Paul and Denise Willigenburg

Please be advised we act on behalf of Paul and Denise Willigenburg of 607 - 609 Point Nepean Road McCrae, which property you are aware of.

We have been instructed by Paul that you have had effective conversations with him which he and Denise were appreciative of when you explained that you were doing everything you could and were cooperating with the Shire in relation to remediation works which will have the effect of Paul and Denise enabling them to resume occupancy of their Unit.

Paul and Denise have in particular been somewhat traumatized by the process of dislocation from her home. This is an impetus and part of the reason why this letter is being forwarded to you.

At the outset, please understand that this letter is not written in a typical Lawyers' adversarial aggressive or litigious manner at all. Far from it. Paul and Denise have provided me with instructions, I have conducted two major landslip cases in the Davey Bay area some years ago and accordingly have a good understanding of litigation against the Shire, the vagaries of process with institutional organizations and the attendant frustration and delays and complications.

We appreciate that you are exercising your best endeavours to assist Paul and Denise and once again that is acknowledged and appreciated.

We corresponded with the Shire on 28 June 2023 and received a response from the Shire of 29 June 2023. A copy of both those letters are attached for your information.

Our role is to:-

- Identify the information which is the basis of the proposed and amended proposed remediation process;
- To have their own appointed Geo Technical Engineers hopefully "tick and flick" the Geo Technical information and remediation proposals so that Paul and Denise have the comfort of knowing that they do not need to actively legally engage in any process other than to understand and approve of the proposed works. The frustration is and

shared by you as we understand it in conversation with Paul that there are issues that the Shire have not in your view yet resolved the matter. That being understood because of the bureaucratic nature of the Shire, it remains in our view very appropriate for Paul and Denise to be so advised as requested so that they may make their own evaluations;

- In simplicity, Paul and

(a) They wish to go home

(b) They need to know
and property security

(c) There are issues of
which are insignificant;
less;

(d) That our costs be kept

to safeguard their personal

expenses and the like
compensable none the

professional time.

We emphasise we are seeking
cost manner.

expeditious and low

In the event that you are covered
that may compromise your in
the principals of subrogation, for
the person's contact phone
inadvertence and possible loss

in any discussions
acting for you under
relevant organization
compromise you by

Often common sense is missing at the outset of files or negotiations. We invite you to respond within 7 days. If you have engaged a Lawyer, please identify that Lawyer and have that Lawyer contact Paul McGuinness. It is our wish that we have a "without prejudice" conference in order to discuss the disclosure and the path to resolution in the simplest effective way.

Regards

PAUL McGUINNESS

McGuinness Legal Pty Ltd

Encl.

Redacted

Rhonda Locandro

From: Claudio Flores <claudio.flores@mornpen.vic.gov.au>
Sent: Thursday, 29 June 2023 10:41 AM
To: Rhonda Locandro
Cc: Matt Glover
Subject: RE: Willigenburg

Dear Rhonda,

In response to your letter and following consultation with Council's legal advisor, I confirm that Council is not in a position to release the requested information on the ground that Council does not have any disclosure obligation at this stage. However you may attempt to apply for information via Council's FOI request process.

To update your client, I advise that Council's building department have now received structural and a site stability geotechnical report from the owners of 10-12 View Point Road McCrae (owners). This information has been sent to Council engineers and an external geotechnical landslip expert (Stantec) for a peer review and I estimate that we should get a response by the end of next week. This may result in requiring further information, design alterations or hopefully approval of the design.

The design consists of structurally engineered retaining walls installed in 4 different areas up the slope to stabilise the land. I am hoping that the design is approved so that Council can progress towards providing the owners with approval for undertaking the work.

Once the peer review is complete, further information such as independent structural certification, Council road opening permits etc will need to be obtained by the owners.

I am unable to provide a date for when works may commence until the design has been approved and all the relevant information is submitted for review and approval by Council.

Once the rectification works have reached a suitable level of completion (this level is yet to be determined) and the landslip is considered safe, Council will be in a position to advise your client that it is safe to return to their home.

I sympathise with your client who has been displaced as result of the landslide and Council is doing everything in its power to push for the remediation works to occur. This process is taking longer than expected due to the level of geotechnical investigation and structural design that needs to occur. The owners have been cooperative throughout the whole process and are trying their best to remedy the land.

Regards



**MORNINGTON
PENINSULA**
Shire

CLAUDIO FLORES | Deputy Municipal Building Surveyor

Email: claudio.flores@mornpen.vic.gov.au

Phone: 03 5950 1060

Private Bag 1000, Rosebud VIC 3939 | 2 Queen Street, Mornington VIC 3931

Follow us on social media!



FOR OUR ELDERS

**National
NAIDOC Week**
2-9 JULY 2023

Mornington Peninsula Shire acknowledges and pays respect to the Bunurong people, the Traditional Custodians of these lands and waters.
We are committed to carbon neutrality.

From: Rhonda Locandro <rhonda@mcguinnesslegal.com.au>
Sent: Wednesday, 28 June 2023 4:06 PM
To: Claudio Flores <claudio.flores@mornpen.vic.gov.au>

Subject: Willigenburg
Importance: High

Dear Claudio

Please see attached letter.

Regards

Rhonda Locandro
Personal Assistant to Paul McGuinness

3 Eighth Avenue, Rosebud Victoria 3939
T: 03 5986 6445
F: 03 5986 6687
E: rhonda@mcguinnesslegal.com.au

McGuinnessLegal

Liability limited by a scheme approved under Professional Standards Legislation

DISCLAIMER: This email and any files transmitted with it are confidential. If you have received this email in error, please notify the author immediately and delete the email and any attachments from your computer. Emails may be interfered with and contain computer viruses or other defects. The author accepts no liability in connection with the transmission of this email.
Think before you print.

- "PLEASE NOTE: Due to COVID-19 restrictions, we require proof of double vaccination status for face-to-face appointments. If you are unable to confirm your double vaccination status, please ring the office on (03) 5986 6445 and we will make alternative arrangements to support you."

DISCLAIMER: This email (and attachments) is for the intended recipient only and may contain privileged, confidential or copyright information. If received in error, please notify sender immediately and delete. Any other use is prohibited. Shire accepts no liability for damage caused by this email (and attachments) due to viruses, corruption, delay, interruption, unauthorised access or use. Views expressed are those of the individual and not necessarily Shire. The Shire collects personal information you provide in accordance with its Privacy Policy, the Privacy and Data Protection Act 2014 and the Health Records Act 2001. The personal information you provide will be used by the Shire for the purpose it was provided and it may be used for a related secondary purpose that you would expect. You may access the personal information you have provided to the Shire at any time and make corrections if you believe that information is incorrect. The Shire's Privacy Policy can be viewed on the Shire's website at mornpen.vic.gov.au/PrivacyStatement



McGuinnessLegal

Our Ref: PMcG:RL:23183091

28 June 2023

Mr Claudio Flores
 Mornington Peninsula Shire Council
By email only: claudio.flores@mornpen.vic.gov.au

Dear Claudio

**Our clients: Paul and Denise W
 Landslip behind 607-609 Point**

We refer to our letter to you of th
 now with your legal team.

You will appreciate that this matt

We would appreciate an update
 meeting with you.

We await your urgent response.

Yours faithfully
McGuinness Legal Pty Ltd

Paul McGuinness
 Principal

Encl.

Redacted

E-MAILED

onse that the matter was

cil's response.

inging a tele-conference