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Sent: Sun 5/11/2025 8:50:45 PM (UTC+10:00)
To: <submissions@mccraeinquiry.vic.gov.au>
Subject: McCrae Landslip Inquiry submission
Attachment: MP Ratepayers&residents sub PSamendment C52 14.2.pdf
Attachment: Len WarfeC52 PS amendment 2003 verbal sub.pdf
Attachment: JW submission PSAmendment11.2.pdf
Attachment: Addendum to L.WarfeVerbal 2003.pdf
Attachment: C52 MPRRA Jenny Verbal 26.8.02.pdf

Ms. Renee Enbom KC
 Chair
 McCrae Landslip Inquiry
 11th May 2025

Dear Ms. Enbom and Inquiry members

We apologise for the unavoidable delay in submitting the attached information to the Inquiry.

Background

We are brother and sister Len and Jenny Warfe. We are long term residents of the Dromana/McCrae area, and for the last 58 years our family home — Foord Lane Dromana, has been on the Anthonys Nose escarpment just East of the current landslip area. Jenny now lives nearby at — Burton St. Dromana.

We wish to bring to the Inquiry's attention some detail regarding the Mornington Peninsula Planning Scheme Amendment (C52) and the 2003 Panel Inquiry for the land at 611-613 Pt. Nepean Rd McCrae, and the recommendations of the Panel Inquiry Members which approved the Planning Scheme Amendment which facilitated the construction of the medium density Unit development below the 2025 land slip. Some of those units are now indefinitely affected by Emergency evacuation orders and not fit to be occupied. In one instance the owners of one unit have not been able to live in their home since the 2022 landslide which also affected their property. We feel deeply for these people whose peaceful retirement has been upended.

We were both submitters (written and verbal) to the 2003 Planning Panel Hearing which considered the application for the Planning Scheme Amendment C52. That Panel Hearing approved the Amendment, thus facilitating the development of the site with medium density housing and which is now in part subject to indefinite evacuation orders.

Along with several other interested parties, we made submissions that the Planning Scheme

Amendment should not be allowed, including as our reasons that the nearby and surrounding area had been subject to several landslips over many years and that adding further housing to the area was adding further risk to life, property, and the environment. We further submitted the site should be returned to open space and revegetated, or an informal beach carparking area enhanced with local indigenous tree species for shade, local amenity and to assist in lowering the water table - especially given the site was not able to be fully decontaminated of pollution from its previous non-conforming use as a petrol station/garage.

Had that judicious option been implemented it seems unlikely so many people would now have had their lives upended and ratepayers and taxpayers be facing on going multi-million-dollar costs.

Current issues

We note the Building Appeals Board's recent findings relied on information that there was no work currently being undertaken at the Borghese property at 10-12 View Point Rd. McCrae. As regular McCrae foreshore volunteers, walkers and Pt. Nepean Rd. users over many years we have observed that a now failed retaining wall in the northern boundary area of that site had been built and was intact well before the 2025 landslip occurred. That wall is now slumping towards Pt. Nepean Rd. It appeared to us that wall was well over 1 metre in height.

Other informed locals have agreed with our long memory of the northern part of the site, visible from Pt. Nepean Rd, being partially obscured in earlier years by significant intact vegetation in front of the house. In recent years we have observed that the northern section of that site has had that significant intact vegetation cleared from the northern boundary area – which may have enhanced views to the Bay from the dwelling. Locals have commented to us that the current owners undertook that work so as to create a vegetable garden on the northern extremity of their property. We also understand from others that the owners installed an automatic watering system to the vegetable garden which, some time prior to the January 2025 landslip, had run for several days unchecked on the northern boundary area whilst the owners were not in attendance.

We note the owners of 10-12 View Point Rd. were quoted in The Age (18/1/2025) saying of their McCrae cliff top home: *"The old girl's stood firm for 90 years"*. So, it does invite one to wonder what the current owners may have done differently to the "old girl's" previous owners in terms of their land management? Having admired the once gracious home for almost sixty years, firstly on my (Jenny) way to and from school and over many more years, the removal of long established stabilising cliff top vegetation, then irrigating a cliff top veggie garden above a steep escarpment adjacent to where a 2022 land slip had occurred, springs to mind.

As such, although the Building Appeals Board found that no works were underway at the time of the 2025 landslip, there is evidence that some works – perhaps not in accordance

with Planning requirements and vegetation overlays - were undertaken prior to the 2025 landslip, and may well have contributed to the extent and severity of the landslip. We therefore submit that further investigation into any building activities which may have occurred on the site prior to the 2022 and/or 2025 landslip should be undertaken - and to determine who was responsible for those works.

This whole sorry event appears to be underpinned by an inadequate planning process and what now seems to be a regular tendency (especially in formal decision making processes – VCAT, Panel Hearings, Building Appeals Boards etc.) to discount or ignore competent and informed local knowledge, and instead rely on paid “experts”, whose local knowledge is often lacking and whose independence may be clouded, and a failure to heed documented historical evidence.

This is exemplified in Planning expert Mr. Umbers for the Proponent advising the Panel thus:

In my opinion, land slippage is not an issue with the site. The site is almost flat, whilst Penny Lane to the south provides an appropriate separation from the base of the steep rise in the topography. No site works are required at the base or close to the base of the sudden change in topography. The only concern with land slippage would relate to the development of the surrounding land, not the subject land. (Panel Report p 29)

Likewise, Planner Mr. Mathews for the Council who advised the Panel by letter dated 1 September 2003, that a preliminary search of Shire records had not revealed any relevant information and a further search was being undertaken (Panel Report p 29). It appears no results from the Council’s search were notified at to the Panel prior to its report being released in December 2003.

It is unbelievable that Council would not have any records of previous land slips in the area, given media reports of landslides on the McCrae escarpment from the 1950s (Trove), and the well reported significant 1996 landslip at Anthonys Nose which resulted in closure of Pt. Nepean Rd. and ultimately a decision to realign Pt. Nepean Rd. away from the cliff and closer to the Bay.

We also note in the Transcript of Evidence, Day 1 of this Inquiry, 7th May 2025, Mr. Costello KC (P 23 line 29) advised that information of individual landslides in the area (were) sourced from the Shire’s land slide inventory. It seems the Shire does indeed keep records of previous landslips.

We suggest it is not credible that Council or other experts could so boldly state there was no risk or evidence of land slips in the area, or, as Mr. Umbers appears to do, invite the Panel to determine it should only consider whether there could be a land slip on the subject site. (Panel Report p 29)

Notably, Mr. d’Helin, a lifetime View Point Rd. resident advised the Panel of a land slip which occurred some years prior to 2003, behind 611 Point Nepean Rd, below and adjacent to his property. Again, it seems unlikely Council would have no record of this event. And yet, the Panel for some reason claimed they were confused as to whether the land slide cited by Mr.

d'Helin behind 611 Pt. Nepean Rd. was the same land slip which occurred at 565 Pt. Nepean Rd. as referred to by the Warfe's. As the street addresses suggest, clearly it was not the same landslip, and the Panel should have sought to clarify their confusion.

We also refer this Inquiry to submissions made to VCAT on 1/8/2003 by Mr. Stephen Jones Barrister appearing for applicants for a Planning Application at 3-5 LaTrobe Pde. Dromana. Both Jenny and Len Warfe attended that Hearing. Mr. Jones stated to VCAT that the property at 3-5 LaTrobe Pde. Dromana was not subject to slippage, in contrast to a proposal he was familiar with at McCrae, in a known land slippage area, where a Planning Scheme Amendment - Number C52 was currently under consideration. Mr. Jones stated to VCAT *"McCrae has historic issues of land slip – significant geo-technical landslip"*

And yet, 3 weeks later at the C52 PS Amendment for 611-613 Pt. Nepean Rd. McCrae Panel Hearing on 26 August 2003, and acting for the Proponent, Mr. Jones stated that the recorded slippage at Anthony's Nose (one of those referred to by Mr. Warfe in his submissions) involved a vertical batter on a road cutting at the bottom of the slope, a situation that does not apply to the subject land. Referring to 611-613 Pt. Nepean Rd., Mr. Jones stated that *"there is no evidence in relation to the risk of landslip on the cliff above this site"*. This paradox was also noted to the Planning Panel in Mr. Warfe's attached Addendum to his 26 August 2003 Verbal submission to the C52 Panel Hearing.

And so, in the apparent absence of any Shire records or other documentation of instability in the area or of any "expert" testimony concerning the matter, the Panel stated it was not in a position to make any finding on the risk to the site from landslip – despite so much oral and written history from various credible and well informed long term locals and submitters, and various easily accessible media reports dating back to the 1950s.

At the very least the land slip history in the area should have received much greater scrutiny and analysis by the Panel prior to its decision to approve the C52.

Conclusion

As Len Warfe noted in his 2003 Verbal submission to the C52 Planning Panel (p2) the Precautionary Principle should be invoked in assessing the C52 PS Amendment Application, and that a precautionary approach would be to disallow the Amendment, as Increasing housing density below a steep, unstable cliff face which is already at some risk of slippage is not cautious, it is careless.

Now that the damage we and others warned was possible has been done, we submit that those entities that supported the Planning Scheme Amendment and development of the site into medium density housing should be held to account – being the MPSC and the State government and their Expert witnesses, via its 2003 Planning Panel's Inquiry whose Members so readily approved the Amendment.

The C52 Panel Members made a serious error in approving the C52 PS Amendment. Their

over reliance on “expert” opinion (now shown to be wrong) and dismissing of long-term local knowledge and historical records has underpinned the now multi-million-dollar property and personal injury damages account to date; the upending of many people’s lives; environmental damage and loss of amenity. We trust this Inquiry will acknowledge and reveal the shortcomings of the C52 Amendment assessments and the role it played in this Planning debacle.

Attached some copies of our 2003 submissions to the Panel Hearing that we made or were a party to, being:

- Jenny Warfe written submission
- Len Warfe Verbal submission
- Addendum to Len Warfe Verbal submission
- Mornington Peninsula Ratepayers & Residents Association Inc. (MPRRA) written submission
- MPRRA verbal submission presented by Jenny Warfe, Secretary

This list is perhaps not complete, as some old records are yet to be found. If you wish to access more information than we have presented today, please advise so that we can search for paper records and photos.

Thank you for considering this submission, and we look forward to your response.

Yours sincerely

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