



Emergency Order

EO-134/23

18/05/2023

Gerrard R Borghesi & Bronwyn L Borghesi
4/206 Esplanade
BRIGHTON VIC 3186

RE: 10-12 View Point Road MCCRAE VIC 3938

As you may be aware, Inspections have been undertaken of the above property, the most recent being on 28 March 2023. The inspection highlighted immediate safety concerns at the above mentioned property due to the landslip.

Pursuant to the Section 102 of the Building Act 1993, the Municipal Building Surveyor is required to issue an Emergency Order on the owner or occupier building/land/place of public entertainment if he is of the opinion that the Order is necessary because of a danger to life or property arising out of the condition of the land.

Please find attached a copy of the Emergency Order.

It is imperative that you address the items in the Order immediately, non compliance with the Order can carry a penalty of 500 penalty units for a natural person or 2500 penalty units for a body corporate (one penalty unit equates to in excess of \$165.00).

I draw your attention to your appeal rights as noted at the rear of the Order.

Once the directions in the Order have been completed please contact me to confirm such and arrange any required inspections.

Should you require any clarification, please do not hesitate to contact me on (03) 5950 1060.

Yours faithfully

Irrelevant & Sensitive

Claudio Flores
Authorised Person
Statutory Building Team
Mornington Peninsula Shire Council

Contact the Mornington Peninsula Shire

☎ 1300 850 600
🌐 mornpen.vic.gov.au
✉ customerservice@mornpen.vic.gov.au

By post: Private Bag 1000,
90 Besgrove Street, Rosebud VIC 3939
ABN: 53 159 890 143



FORM 10

Building Act 1993
Building Regulations 2018
 Regulation 178

EMERGENCY ORDER

This emergency order is made under section 102 of the Building Act 1993.

TO:

The owner Gerrard R Borghesi & Bronwyn L Borghesi
 Of 4/206 Esplanade BRIGHTON VIC 3186

FROM:

I am a delegated building surveyor under Section 216B of the Building Act 1993 ("**Act**") for the Mornington Peninsula Shire Council.

The Municipal Building Surveyor is authorised to cause an emergency order to be served on the owner of the land to which this order applies under Division 1 of Part 8 of the Act.

LOCATION OF THE LAND TO WHICH THIS ORDER APPLIES:

10-12 View Point Road MCCRAE VIC 3938 CP 109563 Vol 9438 Fol 254

ORDER:

I, being a delegate of the Municipal Building Surveyor under Section 216B of the Act, order that:

1. By 5pm on 22 June 2023, the owner of 10-12 View Point Road MCCRAE VIC 3938 must carry out the following **temporary** building work or other work to make the land and adjoining land safe pursuant to Section 104(1)(b) of the Act.

- 1.1 Engage a suitably qualified and insured professional to construct suitable temporary retaining walls or other suitable site stabilisation measures in accordance with a Council approved design and work methodology.

Prior to the undertaking of any work, the following documentation will be required to be submitted to Council for review and approval.

- 1.1.1 A site plan indicating the location of the temporary retention work/structures and setbacks from the property boundaries. All work must all be contained within the property boundaries and the ongoing maintenance of these structures are the sole responsibility of the property owner.
- 1.1.2 A methodology of work prepared by a suitably qualified Geotechnical Engineer.

- 1.1.3 Design of all proposed retention works. All retaining walls, whether gabion, sleeper, large rock or other type of construction, are to be designed by a Registered Civil or Structural Engineer, and the structural design Certified (R126 certificates) by an independent Registered Civil or Structural Engineer other than the design engineer. Copies of the engineers drawings and the Structural Certification must be lodged with Council.
- 1.1.4 A Form B 'Structural/Civil/Geotechnical Engineering Declaration' in accordance with the AGS 'Practice Note Guidelines for Landslide Risk Management 2007' should be completed by a Structural Engineer Registered as a Civil or Structural Endorsed Building Engineer with the Victorian Business Licencing Authority and also a Specialist Geotechnical Engineer or a Specialist Engineering Geologist as defined in the AGS 'Practice Note Guidelines for Landslide Risk Management 2007', and a copy lodged with Council.
- 1.1.5 A copy of insurance certificate from your nominated contractor.
- 1.1.6 Written confirmation from a geotechnical engineer confirming they are engaged to supervise the work.
- 1.1.7 Provide any other information or documentation required following the review of the submitted information and documentation.
- 1.2 Remove all landslip debris from Penny Lane McCrae and reinstate the road reserve to the satisfaction of Council. Prior to commencement of any works to Penny Lane, the owner must obtain a road opening permit from Council's Asset Protection Team.
- 1.3 Upon completion of the temporary work, a Building Regulation 126 certificate of compliance for the inspection of the walls must be submitted to Council. The certificate must cover the inspection of footings and the completion of work.
- 1.4 Soon after (28 days) of the completion of the works, a Form G 'Final Geotechnical Certificate' in accordance with the AGS 'Practice Note Guidelines for Landslide Risk Management 2007' should be completed by a Specialist Geotechnical Engineer or Specialist Engineering Geologist as defined in the AGS 'Practice Note Guidelines for Landslide Risk Management 2007', and a copy submitted to with Council.
2. By 5pm on 15 September 2023, the owner of 10-12 View Point Road MCCRAE VIC 3938 must carry out the following **permanent** building work or other work to make the land safe pursuant to Section 104(1)(b) of the Act.
 - 2.1 Engage a suitably qualified and insured professional to construct suitable retaining walls or other site stabilisation walls in accordance with an approved design and work methodology.

Prior to the undertaking of any work, the following documentation will be required to be submitted for peer review and approval.

 - 2.1.1 A site plan indicating the location of the retaining/gabion/stone walls or any other work, and the setbacks from the property boundaries. All work must be contained within the property boundaries and the ongoing maintenance of these structures are the sole responsibility of the property owner.
 - 2.1.2 A methodology of work prepared by a suitably qualified Geotechnical Engineer.

- 2.1.3 Recommendations from a geotechnical engineer regarding the ongoing use of garden watering systems on or near the escarpment.
- 2.1.4 Design of all proposed retention walls or structures. All retaining walls, whether gabion, sleeper, large rock or other type of construction, are to be designed by a Registered Civil or Structural Engineer, and the structural design Certified (R126 certificates) by an independent Registered Civil or Structural Engineer other than the design engineer. Copies of the engineers drawings and the Structural Certification must be lodged with Council.
- 2.1.5 A Form B 'Structural/Civil/Geotechnical Engineering Declaration' in accordance with the AGS 'Practice Note Guidelines for Landslide Risk Management 2007' should be completed by a Structural Engineer Registered as a Civil or Structural Endorsed Building Engineer with the Victorian Business Licencing Authority and also a Specialist Geotechnical Engineer or a Specialist Engineering Geologist as defined in the AGS 'Practice Note Guidelines for Landslide Risk Management 2007', and a copy lodged with Council.
- 2.1.6 A copy of insurance certificate from your nominated contractor must be submitted prior to commencing works.
- 2.1.7 Written confirmation from a geotechnical engineer confirming they are engaged to supervise the work.
- 2.1.8 A copy of the road opening permit obtained from Council should you require further access via Penny Lane.
- 2.1.9 Provide any other information or documentation required following the review of the submitted information and documentation.
- 2.2 Upon completion of the retaining/gabion/stone walls, a Building Regulation 126 certificate of compliance for the inspection of the walls must be submitted to Council. The certificate must cover the inspection of footings and the completion of work.
- 2.3 Soon after (28 days) of the completion of the works, a Form G 'Final Geotechnical Certificate' in accordance with the AGS 'Practice Note Guidelines for Landslide Risk Management 2007' should be completed by a Specialist Geotechnical Engineer or Specialist Engineering Geologist as defined in the AGS 'Practice Note Guidelines for Landslide Risk Management 2007', and a copy submitted to with Council.

INSPECTION DETAILS:

The date and time of the inspection of the land carried out by myself as the relevant building surveyor are —

Time of inspection: 2:20pm

Date of inspection: 18 November 2022

Time of inspection: 2:40pm

Date of inspection: 28 March 2023

REASON(S) WHY THIS EMERGENCY ORDER WAS MADE:

In accordance with section 102 of the Act, I am of the opinion that this order is necessary because of a—

- a. Danger to life arising out of the condition of the land slip affected land.

EMERGENCY ORDER MADE AND SERVED BY:**The delegate of the Municipal Building Surveyor:**

Name: Claudio Flores

Qualification: AdvDipBS

Address: 2 Queen Street, Mornington, Victoria 3931

Email: florescl@mornpen.vic.gov.au

Building practitioner registration no: BS-U 64209

Municipal district : Mornington Peninsula Shire

Emergency order no: EO-134/23

Date of making: 18/05/2023

Signature:

Irrelevant & Sensitive

Notes

1. Cancellation of Emergency Order.

Pursuant to Section 105B of the Act the Municipal Building Surveyor may cancel an emergency order by written notice given to the person to whom the notice was directed if the order was made in error or the circumstances giving rise to the making of the order have changed.

2. Contravention of Emergency Order

Pursuant to Section 118(1) of the Act a person to whom an emergency order is directed must comply with that order. Non-compliance with the order can carry a penalty of 500 penalty units in the case of a natural person or 2500 penalty units in the case of a body corporate.

Pursuant to Section 118(2) of the Act if an emergency order so directs a person must not occupy a building, land or place in contravention of an emergency order. Non-compliance with the order can carry a penalty of 500 penalty units in the case of a natural person or 2500 penalty units in the case of a body corporate.

3. Appeals to the Building Appeals Board.

Pursuant to Section 142(3) of the Act, an owner or occupier of a building or land may appeal to the Building Appeals Board against a refusal of the municipal building surveyor to cancel an emergency order or a failure, within a reasonable time, to cancel the order. In accordance with Section 146 of the Act and Regulation 271 of the Regulations the prescribed appeal period is 30 days from the date of the order.

Pursuant to Section 146(3) of the Act an appeal under section 142(3) does not stay the operation of the emergency order to which the appeal relates.

**If you require any further information, please contact Claudio Flores of the
Statutory Building Unit on (03) 5950 1060 or 1300 850 600.**

FILE NOTE OF SERVICE EMERGENCY ORDER

Subject Property: 10-12 View Point Road MCCRAE VIC 3938

Addressee Name:

Relationship to subject property (*circle*): **private owner/s // company owner // director owner // occupier // builder**

The Emergency Order (EO-134/23) dated 18/05/2023 was viewed by me prior to posting. I certify that the covering letter, signed Emergency Order and attached notes including explanatory notes were served by me by:

- ☐ Delivering the document to (the person).....
at (address).....
on (date)..... at (time) pursuant to **s236(1)(a)**.
- ☐ Leaving the document for the person at (address).....
on (date)..... at (time) with (name of person document left with)
..... pursuant to **s236(1)(b)**.
Being the persons last known or usual place of residence or business with a person apparently not less than 16 years of age who is apparently residing at that address
- ☐ Delivering the document to the Australia Post post box outside 15 Main Street, Mornington and sending the document by standard post addressed to the person at the person's last known or usual place or residence or business as indicated on the document on (date)..... at (time) pursuant to s236(1)(c). *Note : Not being a PO Box*

Additional copies of documentation sent (not considered service pursuant to s236):

- ☐ PO Box on (date) at (time)
- ☐ Email addresson (date) at (time)
- ☐ Placed onsiteon (date)at (time)

In relation to LAND where name and address of owner unknown and there is no occupier

- ☐ Putting the Emergency Order up in a conspicuous position on the land (description of where document put up/placed).....
on (date)..... at (time) pursuant to **s236(4)**.

Emergency Order issued under section 103 of the Building Act

- ☐ Putting the Emergency Order up in a conspicuous position on the building, land or place of public entertainment to which it applies (description of where document put up /placed)
.....
on (date)..... at (time) pursuant to **s236(4)(a)**.
- ☐ Other
on (date)..... at (time)

Officer Signature:.....

Authorised Person: Claudio Flores

Statutory Building Team Mornington Peninsula Shire Council