



1071

# Emergency Order

EO-153/22

28/11/2022

Gerrard R Borghesi &amp; Bronwyn L Borghesi

Irrelevant &amp; Sensitive

Dear Sir/Madam

## RE: 10-12 View Point Road MCCRAE VIC 3938

As you may be aware, I conducted an inspection of the above property on the 18 November 2022. The inspection highlighted immediate safety concerns at the above mentioned property.

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 landslip affected 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

Contact t  
 ☎ 1300 850  
 🌐 mornpen  
 📞 customer

### Personal Information

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

Claudio Flores  
**Authorised Person**  
 Statutory Building Team  
 Mornington Peninsula Shire Council

**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  
**Irrelevant & Sensitive**

**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 5 December 2022, the owner of the property known as 10-12 View Point Road MCCRAE VIC 3938 must carry out the following building work or other work to make the land safe pursuant to Section 104(1)(b) of the Act.

- 1.1 Engage a suitably qualified and insured geotechnical engineer to undertake an assessment of the site and provide a report containing recommendations and work methodology for the undertaking of make safe work to stabilise the land that has been impacted by land slip.

- 1.2 Provide the Municipal Building Surveyor with a copy of the geotechnical report specified in clause 1.1.

The report and its recommendations must be peer reviewed by Council or a nominated representative of Council.

2. By 5pm on 19 December 2022, the owner of the property known as 10-12 View Point Road MCCRAE VIC 3938 must carry out the following 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 undertake make safe work to stabilise the land that has been impacted by land slip.

The work must not occur until the proposed works and methodology have been approved by the Municipal Building Surveyor.

The work must not occur without building permit approval if a building permit is deemed necessary by the Municipal Building Surveyor.

2.2 Prior to undertaking the work, provide the Municipal Building Surveyor with a copy of any supporting documentation, structural designs, computations and Regulation 126 compliance certificates for the proposed site stabilisation work.

2.3 Upon completion of the work, provide the Municipal Building Surveyor with a Regulation 126 Certificate of Compliance Inspection from a registered structural engineer or written confirmation from a suitably qualified geotechnical engineer (as the case requires), confirming that the site stabilisation works have been completed to a satisfactory level.

#### **INSPECTION DETAILS:**

The date and time of any inspection of the land carried out by me, being a delegate of the Municipal Building Surveyor under Section 216B of the Act, is:

Time of inspection: 2:20pm

Date of inspection: 18 November 2022

#### **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 landslip 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-153/22

Date of making: 28/11/2022

Personal Information

Signature:

## 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-153/22) dated 28/11/2022 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 address .....on (date) ..... at (time) .....
- ☐ Placed onsite .....on (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**