



**MORNINGTON
PENINSULA**
Shire

Emergency Order

EO-037/25

14/03/2025

Gerrard R Borghesi & Bronwyn L Borghesi

10-12 View Point Road

MCCRAE VIC 3938

Dear Sir/Madam

RE: 10-12 View Point Road MCCRAE VIC 3938

An inspection of the above property was undertaken on the 14 March 2025. The buildings have been identified as a danger to life and property. This is due to the failing retaining wall located on the eastern side of the property, the location of which is marked up in the attached diagram.

Pursuant to the Section 102 of the Building Act 1993 (Vic), the Municipal Building Surveyor may make an Emergency Order if he is of the opinion that the Order is necessary because of a danger to life or property arising out of the condition, use or proposed use of a building.

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

Personal Information

David Kotsiakos

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 owners: Gerrard R Borghesi & Bronwyn L Borghesi
 Of 10-12 View Point Road
 MCCRAE VIC 3938

FROM:

I, David Kotsiakos, the Municipal Building Surveyor under Section 213 of the Building Act 1993 (Vic) ("**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 building/land to which this order applies under Division 1 of Part 8 of the Act.

LOCATION OF THE BUILDING/LAND TO WHICH THIS ORDER APPLIES:

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

ORDER:

I, the Municipal Building Surveyor under Section 213 of the Act, order that:

1. By 12:00pm on 28 March 2025, the owner/occupier of the Property must undertake demolition work, and associated required works, to the retaining wall located on the eastern side of the Property as identified in the attached diagram, in accordance with:
 - a) geotechnical recommendations; and
 - b) a engineered design prepared by a RPEV registered professional engineer of Victoria ;

sufficient to return the land behind the retaining wall and on 10-12 View Point Road, as close as is safe and reasonably practical to do so, to the existing geometry prior to the construction of the retaining wall as set out in the 2014 feature survey (a copy of which is attached).
2. To the extent it is necessary to obtain building permits or planning permits to undertake the works, they must be obtained prior to the commencement of any works.
3. The works must be undertaken to the satisfaction of Municipal Building Surveyor.
4. Upon completion of the work, sufficient evidence must be provided to the satisfaction of the Municipal Building Surveyor to confirm the works have suitably removed the danger to life or property identified below under "Reasons Why This Emergency Order Was Made".

INSPECTION DETAILS:

The date and time of any inspection of the building/land carried out by me, being the Municipal Building Surveyor under Section 213 of the Act, is:

Time of inspection: 8:45am

Date of inspection: 14 March 2025

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 immediate danger to life or property by reason of an uncontrolled collapse of the retaining wall tumbling or sliding downslope of its location on the Property and material behind the retaining wall collapsing and sliding downslope due to lack of support by the retaining wall, resulting in a danger of:

- a. major to catastrophic damage to property located at 607 Point Nepean Road, McCrae;
- b. major to catastrophic structural damage to 6 View Point Road, McCrae; and
- c. death or serious injury to any persons in the vicinity of the retaining wall, including behind or adjacent to the retaining wall.

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

Name: David Kotsiakos

Address: 2 Queen Street, Mornington, Victoria 3931

Email: david.kotsiakos@mornpen.vic.gov.au

Building practitioner registration no: BS-U 1397

Municipal district : Mornington Peninsula Shire

Emergency order no: EO-037/25

Date of making: 14/03/2025

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 David Kotsiakos of the
Statutory Building Unit on (03) 5950 1060 or 1300 850 600.**