

Emergency Order

EO-047/25.01



04/06/2025

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 10 February 2025, 17 February 2025, 4 March 2025, 25 March 2025, 8 April 2025, 22 April 2025, 28 April 2025, 9 May 2025 and 3 June 2025. The condition or use of the buildings, being the dwelling, outbuildings, deck and staircase and rock wall, have been identified as a potential danger to life or property.

Pursuant to Section 102 of the Building Act 1993, the Municipal Building Surveyor may issue an Emergency Order on the owner or occupier of a building, land, or 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 or use or proposed use of the 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.

I confirm that the following notices or orders remain in force in relation to this property:

EO-037/25 Dated 14/03/2025
EO-047/25.01 Dated 04/06/2025
BN-058/25 Dated 21/05/2025
BN-073/25 Dated 27/05/2025

Any other Notice or Order previously issued in relation to this property has either lapsed or is cancelled

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

Yours faithfully,

Irrelevant & Sensitive

David Kotsiakos
Authorised Person
Municipal Building Surveyor
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: 53 150 800 143



**MORNINGTON
PENINSULA**
Shire

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 10-12 View Point Road
MCCRAE VIC 3938

FROM:

I David Kotsiakos the Municipal Building surveyor under Section 213 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 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. At **12:00pm on 4 June 2025**, entry into the Buildings and the land by any person, unless authorised by the Municipal Building Surveyor, is prohibited for a period of **48 hours** pursuant to Section 103(2) of the Act.

Please note that a building notice has also been issued and should be read in conjunction with this order.

Please note by reason of the issuing of that building notice, pursuant to section 105A(2), the emergency order remains in force for a period of 14 days.

INSPECTION DETAILS:

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

8:30am-12:00pm

Date of inspection: 10 February 2025

AND

Time of inspection: Between 11:00am-12:30pm

Date of inspection: 17 February 2025

AND

Time of inspection: Between 8:30am-11:30am

Date of inspection: 4 March 2025

AND

Time of inspection: Between 3:00pm – 4:30pm

Date of inspection: 25 March 2025

AND

Time of inspection: Between 9:30-11:00am

Date of inspection: 8 April 2025

AND

Time of inspection: Between 9:00am - 11:00am

Date of inspection: 22 April 2025

AND

Time of inspection: Between 9:00am - 10:00am

Date of inspection: 28 April 2025

AND

Time of inspection: Between 1:30pm – 4:00pm

Date of inspection: 9 May 2025

AND

Time of inspection: Between 10:00am – 11:45am

Date of inspection: 20 May 2025

AND

Time of inspection: Between 8:30am – 11:00am

Date of inspection: 3 June 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 a –

Danger to life and property arising out of the condition and use of the buildings and land

There is a danger to life and property arising out of the condition and use of buildings and land at 10-12 View Point Road, McCrae (**Property**).

1. Landslides occurred on or about 5 January 2025 and 14 January 2025) (the **Landslides**) at the Property and at the adjoining properties known as 3 Penny Lane, McCrae, Victoria and 6 View Point Road, McCrae, Victoria (**Landslide Site**). which have resulted in:
 - (a) instability of the land on the property; and
 - (b) the partial collapse of the retaining wall located on the eastern side of the property.
2. The Landslides have caused the land on the property to be unstable, with the result that further landslides are highly likely pending stabilisation works.

3. The buildings on the property that are the subject of this notice are:

- (a) the dwelling;
- (b) the retaining wall, garden wall, garden shed, workshop and open pergola (adjacent to the workshop) all of which are located on the eastern side of the property (collectively, the **Outbuildings**);
- (c) a deck and staircase on the western side of the property: **(Building)**

4. This order is necessary because of a danger to life arising from condition and use of the above Buildings as follows:

- (a) the retaining wall has partially collapsed;
- (b) the structural integrity of the remaining Buildings may be compromised;
- (c) a stump and plate located on the northwestern side of the staircase is exposed;
- (d) there is ground water emanating from below the old rock wall;
- (e) any further movement in the soil on the land may cause collapse or further collapse of the Buildings; and

5. The Buildings and land are a danger to other properties, being the properties that could be impacted if there is a further landslide or landslides. Those properties include, 6 View Point Road, McCrae, 603, 605, 607-609 and 3/613 Point Nepean Road, McCrae and 2 and 3 Penny Lane, McCrae. Those properties are in danger because of:

- (a) their proximity to your Property; and
- (b) the potential for land or buildings to move into these other properties in the event of a further landslip from your property;

6. Persons occupying the Buildings or who are on land near the Buildings, are in danger of death or injury from being physically struck/impacted by parts of the Buildings if they collapse; and/or if there is further collapse of the Landslide Site.

EMERGENCY ORDER MADE. AND SERVED BY:

The Municipal Building Surveyor:

Name: David Kotsiakos

Address: 2 Queen Street, Mornington, Victoria 3931

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

Building practitioner registration no: BS-U 1397

Municipal district : Mornington Peninsula Shire

Emergency order no: EO-047/25.01

Date of making: 04/06/2025

Irrelevant & Sensitive

David Kotsiakos

Authorised Officer

Municipal Building Surveyor

Mornington Peninsula Shire Council

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.**