

17/01/2025

Building Notice

BN-010/25



James R Bendell & Jennifer E Bendell
4 View Point Road
MCCRAE VIC 3938

Dear Sir/Madam

RE: 4 View Point Road MCCRAE VIC 3938

An inspection of the above mentioned property was undertaken on 14 January 2024. The buildings and land have been identified as a potential risk to the life safety of any occupant. This is due to the landslide that has occurred at the property known as 10-12 View Point Road, McCrae.

Due to legislative requirements, the notice is written in formal, legal language and contains information on penalties and appeal rights.

We understand this must be an extremely stressful and upsetting time for you and want to assure you we are here to offer support and assistance.

Pursuant to Section 106 of the Building Act 1993, the Municipal Building Surveyor is required to detail these matters in the form of a Building Notice as attached. You are now required to "Show Cause" within 30 days why you should not comply with the directions of the Building Notice, before we consider further enforcement action.

Please find attached a copy of the Building Notice and a Building Notice Response form for you to complete and return it as per the directions at the bottom of the Building Notice Response form.

It is imperative that you respond to the Building Notice within the 30 day period.

I draw your attention to your appeal rights as noted at the rear of the Notice. Should you require any clarification, please do not hesitate to contact me on (03) 5950 1060.

Yours faithfully,

Personal Information

Claudio Flores

Authorised Person

Statutory Building Team

Mornington Peninsula Shire Council

Note: We have a community drop-in centre operating today at the Dromana Visitor Information Centre ((359B Point Nepean Road, Dromana) from 10am to 4pm. It can provide you with access to information and referral to support services.

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 11
Building Act 1993
Building Regulations 2018
 Regulation 180
BUILDING NOTICE

DUE DATE:

**20 February
2025**

This Building Notice is served under Section 106 of the **Building Act 1993**.

TO:

The owner James R Bendell & Jennifer E Bendell
 Of 4 View Point Road
 MCCRAE VIC 3938

FROM:

I Claudio Flores being a delegate of the Municipal Building Surveyor under Section 216B of the Building Act 1993 ("Act") for the Mornington Peninsula Shire Council.

I am authorised to cause a Building Notice to be served on you, as owner of the building/land to which this notice applies, under Division 2 of Part 8 of the Act.

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

4 View Point Road MCCRAE VIC 3938 PC 353964

INSPECTION DETAILS:

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

Time of inspection: 10:00am

Date of inspection: 14 January 2025

REASON(S) WHY THIS NOTICE WAS SERVED:

In accordance with Section 106 of the Act, I am of the opinion that the following circumstance exists:

1. Danger to life, safety or health from building or land

The buildings and land are a danger to the life, safety or health of any person using the building and land due to the unknown condition of the landslip affected land on the property known as 10-12 View Point Road McCrae.

The buildings and land are considered a danger based on the evacuation area established by emergency services following the landslip event.

SHOW CAUSE PROCESS:

Under Section 108 of the Act, you are required to show cause within 30 days of the date of service of this notice—

- a. why entry, use, or occupation of any building or land should not be prohibited until such time the landslip affected land has been made safe to the satisfaction of the Municipal Building Surveyor.

Specified period for making representations:

A 30 day show cause period has been provided for you to make representations.

Specified manner for making representations:

The manner for making representations in response to the matters contained in this notice is by completing the Building Notice Response form attached and return it as per the directions at the bottom of the Building Notice Response form.

BUILDING NOTICE SERVED BY:**Relevant Building Surveyor**

Name: Claudio Flores

Qualification AdvDipBS

Address: 2 Queen Street, Mornington, Victoria 3931

Email: claudio.flores@mornpen.vic.gov.au

Building practitioner registration no. BS-U 64209

Municipal district : Mornington Peninsula Shire

Building notice no.: BN-010/25

Date of making: 17/01/2025

Signature:

Personal Information

Notes

1. Representations by owner and cancellation of Notice

Under Section 109 of the Act an owner may make representations to the Municipal Building Surveyor about the matters contained in the Building Notice. Any representations are to be made in writing to the Municipal Building Surveyor before the end of the 'show cause' period. The Municipal Building Surveyor may cancel a Building Notice if he considers it appropriate to do so after considering any representations made under Section 109.

2. Building Order

Subject to Section 107 of the Act, the municipal or private building surveyor may make a building order under section 111 after the end of the time allowed for making representations.

3. Appeals to the Building Appeals Board

Under Section 142(1) of the Act, an owner of a building or land may appeal to the Building Appeals Board against a decision to serve a building notice, a failure within a reasonable time, or refusal to cancel a building notice. In accordance with Section 146 of the Act and Regulation 271 of the Building Regulations the prescribed appeal period is 30 days from the date of the building notice.

4. What is a Building Notice?

A Building Notice is a 'show cause' Notice. In simple terms, the recipient of a Building Notice is required to provide the Municipal Building Surveyor reasons with why he or she should not comply with the directions detailed in the Notice.

5. Why has a Building Notice been issued?

An authorised officer of the Statutory Building unit has recently inspected the property and identified general safety/non-compliance building related issues. The Municipal Building Surveyor is responsible for addressing these issues in the form of a Building Notice as required by Section 106 of the Building Act 1993.

6. What are you required to do?

It is in your best interest to respond using the attached Building Notice Response form.

7. Building Notice Response Form

You have the option to agree with the direction issued by the Municipal Building Surveyor or provide other written representation or documentation. The Municipal Building Surveyor may request further information after considering your response.

8. Building Order

A Building Order is the next step in the process. If a Building Order is issued, you will be required to undertake the directions of the Order within the stated timeframe. Importantly, compliance with a Building Order is enforceable in the Magistrates Court.

9. What if you do nothing?

The intention of the Building Notice process is to open a discussion between yourself and the Municipal Building Surveyor regarding the issues identified. In the event the Municipal Building Surveyor does not receive a response, a Building Order will be issued containing the same directions detailed within the Notice.

10. Due date calculation

The due date is calculated by adding 5 days postage time to the 30 day show cause period.

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



BUILDING NOTICE RESPONSE

BN-002/25

DUE DATE:**20 February
2025**

I/we ,
owner/s of the building located at 4 View Point Road MCCRAE VIC 3938 wish to submit the following
response to the Building Notice dated 17/01/2025 .

Please select one of the following boxes:

☐ I will not enter the land or buildings until such time it has been authorised by the Municipal Building Surveyor.

☐ Other – Attach any other written representation or documentation to this form and submit (*i.e do you have a building permit that was not submitted to Council*).

Upon receipt of your response the Municipal Building Surveyor will consider your above representations and issue a direction of works in the form of a Building Order. The Building Order will require the owner to undertake the directions of the Order within a stated time period. Importantly, compliance with a Building Order is enforceable in the Magistrates Court.

Signature/s: _____ Date: _____

Contact Person: _____ Phone: _____

Email: _____

Please complete this form and return it to:

Statutory Building Team – Municipal Building Surveyor

C/ - Claudio Flores

Private Bag 1000

Besgrove Street, ROSEBUD VIC 3939

FILE NOTE OF SERVICE OF A BUILDING NOTICE

Subject Property: 4 View Point Road McCrae VIC 3938

Addressee Name: Gerrard R Borghesi & Bronwyn L Borghesi

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

The Building Notice (BN-002/25) dated 15/01/2025 was viewed by me prior to posting. I certify that the covering letter, signed Building Notice 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 Building Notice up in a conspicuous position on the land (description of where document put up/placed).....
..... on (date)..... at (time) pursuant to **s236(4)**.

Building Notice issued under section 108(1) of the Building Act

☐ Putting the Building Notice 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

