

20/02/2025

Building Notice

BN-029/25



Tamworth Falls Pty Ltd
PO Box 363
OFFICER VIC 3809

Dear Sir/Madam

RE: Blue-Waters 603 Point Nepean Road MCCRAE VIC 3938

An inspection of the above mentioned property was undertaken on 10 February 2024 and 17 February 2025.

The use of the buildings and land have been identified as a danger to the life and safety of any occupant. Further, the buildings and land are unfit for occupation. This opinion of the Municipal Building Surveyor is due to the landslip that has occurred at the property known as 10-12 View Point Road, McCrae.

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. If you require access to your building and land for the purpose of experts attending to show cause, please contact Council to arrange supervised access.

It is important you read all the attached information and do not commence any further works until we have reached agreement based on your response.

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

David Kotsiakos
Authorised Officer
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: 53 159 890 143



FORM 11

Building Act 1993
Building Regulations 2018
 Regulation 180

BUILDING NOTICE

DUE DATE:
27 March 2025

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

TO:

The owner Tamworth Falls Pty Ltd
 Of PO Box 363
 OFFICER VIC 3809

FROM:

I am the Municipal building surveyor under Section 213 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:

Blue-Waters 603 Point Nepean Road MCCRAE VIC 3938 Lot 11 LP 11038 Vol 6558 Fol 428

INSPECTION DETAILS:

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

Time of inspection: Between 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

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 use of buildings and/or land **Blue-Waters 603 Point Nepean Road MCCRAE VIC 3938** are a danger to the life, safety or health of any person using the building and land due to the landslides (being the landslides that occurred on or about 5 January 2025 and 14 January 2025 (the **Landslides**) on the property known as 10-12 View Point Road, McCrae (**Landslide Site**).

The Landslides have created a risk of:

- a) undermining the foundations of buildings ; and/or
- b) causing buildings or part of buildings to impact other buildings or persons using the buildings or land; and/or
- c) further landslides impacting the buildings or persons using the buildings or land;

in the area identified on the attached aerial image

Therefore, as a result of the Landslides, there is a risk of further landslides occurring on or around the Landslide Site. This risk is a danger to the life, safety or health of any person using the building and land at **Blue-Waters 603 Point Nepean Road MCCRAE VIC 3938**

2. Unfit for occupation

The buildings at **Blue-Waters 603 Point Nepean Road MCCRAE VIC 3938** are unfit for occupation due to the risk of further landslides, or others buildings or parts of buildings, impacting the buildings or undermining the foundations of the buildings in the area identified on the attached aerial image.

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 area identified on the attached aerial image 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:**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

Building notice no.: BN-029/25

Date of making: 20/02/2025

Signature:

Personal Information

David Kotsiakos

Authorised Officer

Municipal Building Surveyor

Mornington Peninsula Shire

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



BUILDING NOTICE RESPONSE

BN-029/25

DUE DATE:

27 March 2025

I/we
owner/s of the building located at Blue-Waters 603 Point Nepean Road MCCRAE VIC 3938 wish to submit
the following response to the Building Notice dated 20/02/2025 .

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/ - David Kotsiakow

Private Bag 1000

Besgrove Street, ROSEBUD VIC 3939