

Emergency Order

EO-045/25.01

04/06/2025

Tamworth Falls Pty Ltd

Irrelevant & Sensitive

Dear Sir/Madam

RE: Blue-Waters 603 Point Nepean 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, 20 May 2025 and 3 June 2025. The condition or use of the buildings and/or land have been identified as a danger to life.

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

I confirm that EO-045/25.01 and BN-054/25 are now the only notices or orders in force in relation to this property. Any other notices 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: 53 159 890 143



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 owner: Tamworth Falls Pty Ltd

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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:

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

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 building or the land either side of the building or to the land to the rear of the building 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

2. Within 7 days, you must prevent access to the land on either side or to the rear of the building on the land by erecting a fence or barrier that is at least 1.8 meters in height.

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: 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
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 10:00am - 11:45am	Date of inspection: 20 May 2025
AND	
Time of inspection: Between 8:30am 10:30am	Date of inspection: 3 June 2025

REASON(S) WHY THIS EMERGENCY ORDER WAS MADE:**Danger to life arising out of the condition and use of the building**

In accordance with section 102 of the Act, I am of the opinion that this order is necessary because of a danger to life arising out of the condition or use of the buildings on the Property due to:

1. The condition of the building that gives rise to the danger to life is its proximity to unstable land on adjoining properties. This puts the building in a vulnerable condition because it is likely to be damaged if the unstable land collapses.
2. The use of the building gives rise to the danger to life because any use of the building whilst it is in a vulnerable condition is dangerous. This is because any occupiers of the building may suffer injury if the unstable land collapses causing land or buildings from adjoining properties to slide or collapse resulting in damage to the land or building on your Property.
3. The unstable land arises due to landslides occurring on or about 5 and 14 January 2025 on the 3 properties known as 10-12 View Point Road. McCrae, 6 View Point Road McCrae and 3

Penny Lane, McCrae. Pending remediation work to these 3 properties, the land will remain unstable and the building on your Property will be in a vulnerable condition.

4. Access to your land at the front of the building to undertake maintenance or the like is permitted. However, access to the sides and rear of the dwelling is prohibited for the reasons set out above. This is the reason why this Order requires you to erect a fence or barrier to prevent access to the sides and rear of the building by any person.

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-045/25.01

Date of making: 04/06/2025

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David Kotsiakos

Authorised Officer

Municipal Building Surveyor

Mornington Peninsula Shire Council

Notes

1. Duration of Emergency Order

Under section 105A(2) of the Act, if the municipal building surveyor issues a building notice before the end of the period specified in the emergency order, asking the owner to show cause why entry into, or the use or occupation of, the building or place that is subject to the order should be prohibited, the emergency order remains in force until the earlier of –

- a. the end of the specified period under section 108 for the building notice; or
- b. 14 days

2. 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.

3. 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.

4. 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.**