

21/05/2025

Building Notice

BN-056/25



**MORNINGTON
PENINSULA**
Shire

Tranh H Nguven & Thi T Phan

Irrelevant & Sensitive

Dear Sir/Madam,

RE: 607-609 Point Nepean Road MCCRAE VIC 3938

An inspection of the above mentioned 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 and 20 May 2025.

The buildings and land on the above property have been identified as a danger to the life, safety or health of any members of the public or of any persons using the buildings or land or to any property as set out in the attached notice.

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 take the actions specified in 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 confirm that EO-044/25 and BN-056/25 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.

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

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 11

Building Act 1993
Building Regulations 2018
 Regulation 180

BUILDING NOTICE

DUE DATE:

25 June 2025

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

TO: The Owner

Tranh H Nguyen & Thi T Phan

Of

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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 TO WHICH THIS NOTICE APPLIES:

607-609 Point Nepean Road VIC 3938 Lot 3 PS 348585 Vol 10283 Fol 264

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

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

REASON(S) WHY THIS NOTICE WAS SERVED:

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

Danger to life, safety or health from building/land

The buildings/land are a danger to the life, safety or health of any member of the public or of any person using the building/land or to any 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 10-12 View Point Road, McCrae, Victoria and 3 Penny Lane, McCrae, Victoria (**Landslide Site**).
2. The Landslides have caused the land on the Landslide Site to be unstable, with the result that further landslides are highly likely.
3. Should further landslides occur, it is likely that the buildings located on the Landslide Site will collapse and those buildings, as well as significant landslide debris, will slide onto the Property.
4. The buildings and land on the Property have been damaged by debris from the Landslides. This debris includes parts of the building previously located on 3 Penny Lane, McCrae. This has also undermined the structural integrity of the main dwelling on the Property.
5. Persons occupying the buildings or who are on the Property are in danger of death or serious injury by being physically struck or impacted by:
 - (a) the existing debris mobilising further into the main dwelling or other parts of the land on the Property; or
 - (b) parts of the main dwelling collapsing due to the existing damage; or
 - (c) collapsed buildings and other significant debris from any further landslides.

SHOW CAUSE PROCESS:

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

- a. why entry, use, or occupation of any building should not be prohibited.

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 writing to the Municipal Building Surveyor.

BUILDING NOTICE SERVED BY:**Relevant 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-056/25

Date of making: 21/05/2025

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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 by writing to the Municipal Building Surveyor.

7. 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.

8. 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.

9. 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.