

21/05/2025

**Building Notice**

BN-058/25



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 mentioned property was 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 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 member of the public or of any persons using the building 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 the following notices or orders remain in force in relation to this property:

EO-152/22 Dated 18/11/2022  
BO-004/24 Dated 04/04/2024  
BO-005/24 Dated 04/04/2024  
EO-037/25 Dated 14/03/2025  
EO-047/25 Dated 21/05/2025  
BN-058/25 Dated 21/05/2025

Any other Notice 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](mailto:mornpen.vic.gov.au)  
✉ [customerservice@mornpen.vic.gov.au](mailto: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

Gerrard R Borghesi & Bronwyn L Borghesi

Of 10-12 View Point Road MCCRAE VIC 3938

**FROM:**

I am 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:**

**10-12 View Point Road MCCRAE VIC 3938 CP 109563 Vol 9438 Fol 254**

**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 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 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

**REASON(S) WHY THIS NOTICE WAS SERVED:**

In accordance with Section 106(d) of the Act, I am of the opinion that the following circumstances 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 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.
3. The buildings on the property, including the dwelling and also including the retaining wall, garden wall, garden shed, workshop and open pergola (adjacent to the workshop) (collectively, the **Outbuildings**) located on the eastern side of the property are a danger to the life of any person occupying or using the buildings, as the retaining wall has partially collapsed and the structural integrity of the footings of the remaining buildings may be compromised. Any movement in the soil on the land may cause the further collapse of the retaining wall and lateral movement in the footings systems of the remaining buildings, resulting in a danger of death or serious injury to:
  - (a) any persons occupying or otherwise using dwelling or the Outbuildings on the property;
  - (b) any persons who are otherwise on the land.
4. Persons occupying those buildings or who are on the property near the buildings, are in danger of death or serious injury from:
  - (a) being physically struck/impacted parts of the dwelling if it collapses; and/or
  - (b) being physically struck/impacted by the retaining wall or other Outbuildings

if there is further collapse of the Landslide Site.
5. The deck and staircase located on the western side of the property is a danger to the life of any person using it because:
  - (a) a stump and plate located on the north western side of the staircase is exposed; and
  - (c) the land below and alongside the deck and staircase is unstable due to the Landslides, compromising the structural integrity of the deck and staircase.
6. Persons using the deck or staircase or who are on the property near the deck or staircase are in danger of death or serious injury by:
  - (a) being physically struck/impacted parts of the dwelling if it collapses; and/or
  - (b) being physically struck/impacted by the retaining wall or other Outbuildings

if there is further collapse of the Landslide Site.

**Building work has been carried out without a building permit being issued and in force under the Building Act 1993**

Building work has been carried out to construct a basement of the dwelling without a building permit having been issued and in force at the time that the building work was carried out. This work may contribute to a further likely landslide on the property.

**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 the building, outbuildings, deck and staircase, rock retaining walls and garden walls and land 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](mailto:david.kotsiakos@mornpen.vic.gov.au)

Building practitioner registration no. BS-U 1397

Municipal district: Mornington Peninsula Shire

Building notice no.: BN-058/25

Date of making: 21/05/2025

**Irrelevant & Sensitive**

**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 in 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.