

Notes for Protection of Adjoining Property

*Pursuant to Regulation 602 of the Building Regulations 2006
and Part 7 of the Building Act 1993*

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When Protection is Required

The nature and location of the building works may require that measures be taken to prevent damage to adjoining property. This might typically comprise or include “underground” protection and/or “overhead” protection.

What is Adjoining Property

An adjoining property means land (including any street or right of way) which is so situated in relation to the site on which building work is to be carried out as to be at risk of significant damage from the building work.

Protection Work

Protection work can be permanent or temporary and includes underpinning, the provision of vertical support, lateral support, protection against variation in earth pressures, provision of ground anchors and other support for adjoining property. Protection work also includes shoring, overhead protection of adjoining property and any other work designed to maintain the stability of adjoining property or to protect adjoining property from damage during the building works.

Insurance Requirements

The Building Act requires that the owner of the land on which building work is to occur must purchase insurance to protect against damage by protection works to adjoining property and liabilities arising out of the building work. The insurance must be in place prior to commencement of the protection works. The required period of insurance is the period of the actual building work plus a period of 12 months after completion. The amount of cover must be agreed between the owner and the adjoining owner. (Disputes can be resolved by the Building Appeals Board.)

Generally, the builder should carry an appropriate form of insurance. It is recommended that any policy seeking to cover protection of adjoining property should be checked to ensure that:-

- (a) the property and the property owners are covered under the policy;
- (b) the policy covers damage by the proposed protection work to the adjoining property and any liabilities likely to be incurred to adjoining occupiers and members of the public during the carrying out of the building work.

It will be necessary to renew the policy as required to ensure that cover remains in place for a period of at least 12 months after completion of the building work.

Procedure for Serving Notices

Protection notices (Forms 3 & 4) might be served on adjoining owner(s) in the following manner:-

Step 1 Prepare a cover letter to every adjoining owner and include Forms 3 and 4 with the letter. The following matters are suggested for inclusion:-

- state that the letter is fulfilling obligations under the Building Act 1993 relative to protection of adjoining property;
- mention the adjacent property affected by the work;
- describe the extent of the proposed building work;
- describe the work methods to be adopted so that the extent of protection measures proposed can be related to the nature and manner of the proposed building work;
- mention that a joint owner/adjoining owner condition survey will be carried out on the adjoining buildings (photos, written description of existing conditions, survey, etc.). Enclose a condition survey for agreement if available;
- make reference insurance cover to be put into place. Enclose a copy of the insurance policy for agreement if available;
- state the programme for the protection works. Give approximate commencement date and duration;
- list all protection works measures (as distinct from the building work itself) including any temporary hoardings to be erected and confirm that safe building procedures will be adopted to ensure protection of persons and property;
- particularly mention protection measures which encroach into the adjoining property;

Include the following documents as relevant:-

- Structural drawings (showing bulk excavation, site retention, footings, etc), soil report, computations.
- Architectural drawings (town planning drawings should normally suffice) and details of protection measures proposed;
- Details of any overhead protection measures such as hoardings, scaffolding details, catch fans, roof planking plans, etc;
- Completed Form 3, listing all the relevant documents and details. It is important to complete all sections of the form accurately and in full. Reference should be made to title particulars as well as street addresses.
- Three copies of Form 4. (Three copies so that one copy can be kept by the adjoining owner, one copy returned to you, and one copy returned to the Relevant Building Surveyor.)

Step 2 Send the package to each adjoining owner.

Send a duplicate of the entire package to the Relevant Building Surveyor. Include a declaration to advise documents served and the date and manner of service. (Refer to draft declaration attached.)

Step 3 The adjoining owner should complete and return the Form 4 and copy the Relevant Building Surveyor and keep one for their own records.

If the adjoining owner does not respond within 14 days of receipt of the notice, it is taken that they have consented. i.e. The adjoining owner will be deemed to have consented on the basis of the documents presented to them.

General Notes

1. Once protection documentation is finalised, the owner must send:

- The entire package of protection documents, including 3 copies of Form 4, to each adjoining owner; and

- A duplicate copy of the entire package of documents (including a declaration if completed, and one copy of each owner's covering letter and Form 3 and Form 4) to the Relevant Building Surveyor.
2. Serving of documents may be by the following means:-
 - Delivery in person; or
 - By registered mail.
 3. For adjoining property comprising multiple strata titles, it is suggested that one set of complete documents be served on the Owners Corporation Agent(s) and that the cover letter, Forms 3 and 4 and a copy of all other documents be sent to each and every registered owner of the common property and the owner of each individual strata unit. If reduced scale documents or electronic documents are served on individual owners, it is recommended that the owners be advised that larger scale hard copy documents are available for viewing from the Owners Corporation Agent.
 4. Under the Building Act, each adjoining owner will have 14 days from the date of receipt to return a Form 4 notice either:-
 - agreeing to the proposed protection work; or
 - disagreeing with the proposed protection work; or
 - requesting further information to enable the proposal to be considered by the Relevant Building Surveyor.
 5. If the adjoining owner does not respond, he or she will be deemed to have agreed to the proposed protection work.
 6. Where the adjoining owners agree or are deemed to have agreed, the builder can proceed with the building and protection works.
 7. If an adjoining owner disagrees or requests further information, the Relevant Building Surveyor must examine the proposal for protection work and determine if it is appropriate. The Relevant Building Surveyor must notify the owner and the adjoining owner in writing of the determination. The determination will set the required nature and type of protection work to be carried out. There are rights of appeal to the Building Appeals Board if any party is not satisfied with the determination of the Relevant Building Surveyor. Following a determination by a Relevant Building Surveyor, there is a 14 day period during which a party can lodge an appeal. Building and protection work relevant to the determination of the building surveyor cannot commence until the period for lodgement of an appeal expires. If an appeal is lodged, work cannot commence until the appeal has been determined by the Building Appeals Board.
 8. The owner and the adjoining owner must carry out a survey of the adjoining property. The survey must be completed and agreed prior to commencement of the protection works.
 9. The owner must ensure that a contract of insurance is in force that meets the following specifications:
 - the policy covers damage by protection work to the adjoining property and liabilities likely to be incurred to adjoining occupiers and the public during carrying out of the building work;
 - the policy is for an amount agreed between the owner and the adjoining owner;
 - the policy covers the works 12 months after completion of the building work; and
 - a copy of the policy (and any renewals) are lodged with the adjoining owner.The insurance must be in place prior to commencement of the protection works.

Encl. Form 3 & 4
Declaration

Declaration of Service of Protection Notices

To The Relevant Building Surveyor

I,being the owner/agent
(owner or agent)

of
(insert location of proposed building work)

do solemnly and sincerely declare as follows:-

1. Pursuant to Regulation 602 of the Building Regulations 2006 ("the Regulations"), I am required to provide protection for adjoining property.
2. In accordance with Section 84 of the Building Act 1993 ("the Act"), I served protection details on all adjoining owner/s of adjoining property situated at:
.....
(address of adjoining property)
3. The details served comprised:-
 - (a) **a notice in accordance with Form 3 of the Regulations and three copies of Form 4;**
and
 - (b) **prescribed* details of the proposed building works as at the date of the notice;**
and
 - (c) **prescribed * details of the proposed protection works setting out the nature, location, time and duration of the protection works; and**
 - (d) **other prescribed* information.**
4. These documents were served by (insert how served) on
..... (insert date on which served).
5. A full copy of all documents and prescribed * details and information is attached to this declaration.

Signature: _____

Date: _____

Print Name: _____

** Prescribed details and information means the relevant details set out in Form 3 and any other information set out in Form 3.*

FORM 3
PROTECTION WORK NOTICE

Building Act 1993, BUILDING REGULATIONS 2006, Regulation 602(c), 602 (3)

To: (Adjoining Owner)

(Contact Person, Phone No, Postal
Address & Postcode)

Relevant Building Surveyor:

(Contact Person, Phone No, Postal
Address & Postcode)

From: (Owner/Agent)

(Contact Person, Phone No, Postal
Address & Postcode)

Permit Point Building Consultants Pty Ltd
PO Box 234 COBURG Vic 3058

Contact Person: Adnan Ramadan

Phone: 9350 7441

In accordance with Section 84 of the Building Act 1993, I give notice of my intention to carry out building work on my land and request your agreement to the proposed protection work.

Property Details:

(Building Work Site)

Address			
Lot/s		LP/PS	
Volume		Folio	
Crown Allot.		Section	
Parish		County	
Municipal District Of:			

Adjoining Property Details:

(adjoining owners site)

Address			
Lot/s		LP/PS	
Volume		Folio	
Crown Allot.		Section	
Parish		County	
Municipal District Of:			

Protection Work and Program:

Nature:

Location:

Time & Duration:

Signature of Owner or Agent:

Date:

NOTE Under section 85 of the Act, the adjoining owner must respond to a notice under section 84 of that Act by giving to the owner within **14 days** a notice under section 85 of that Act:

- (i) agreeing to the proposed protection work;
- (ii) disagreeing to the proposed protection work; or
- (iii) requiring more information.

(Failure to respond will be taken as agreement to the proposed protection work.)

In the case of (ii) and (iii) above, a copy of the notice under section 85 of that Act must also be given to the relevant building surveyor. (See regulations 602(4) and 602(5) and Form 4.)

PROTECTION WORK RESPONSE NOTICE

FORM 4 Building Act 1993

BUILDING REGULATIONS 2006
Regulation 602(4), 602(5)

REGARDING PROPERTY AT:

(Building Work Site)

To: (Owner/Agent)

(Contact Person, Phone No, Postal Address & Postcode)

Relevant Building Surveyor:

(Contact Person, Phone No, Postal Address & Postcode)

From: (Adjoining Owner)

(Contact Person, Phone No, Postal Address & Postcode)

Address of Adjoining Property:

Permit Point Building Consultants Pty Ltd
PO Box 234 COBURG Vic 3058

Contact Person: Adnan Ramadan

Phone: 9350 7441

RESPONSE

In accordance with Section 85 of the Building Act 1993, I hereby respond to the Form 3 notice served to me by the owner under that section and (please tick appropriate box):

(i) Agree to the proposed protection work.

Tick Box

☐

(ii) disagree with the proposed work for the following reasons:

☐

(iii) request the following further information:

☐

Signature of Adjoining Owner or Agent:

Date:

NOTE The notice under section 85 of the Building Act 1993 must be given to the owner or agent within 14 days of being served with a notice under section 84 of that Act and in the case of (ii) or (iii) must also be given to the relevant building surveyor who must determine the matter under section 87 of the Building Act 1993. (See regulations 602(4) and 602(5))