

## INFORMATION REGARDING PROTECTION OF ADJOINING PROPERTIES.

*Pursuant to Regulation 111 of the Building Regulations 2018 and Section 84 of the Building Act 1993*

### When is protection of adjoining property required?

An owner is required to carry out protection work in accordance with the Building Regulations 2018 where building work may impact on the structural support of any adjoining property.

### What are the requirements?

An owner, if required to carry out protection works, must serve on the adjoining owner and the Relevant Building Surveyor notice (**Form 7**) of the proposed building work. The notice must include details of the proposed building work and details of the proposed protection work detailing the nature, location, time and duration with relevant architectural, structural, survey plans attached.

The adjoining owner has 14 days to give to the Relevant Building Surveyor a response (**Form 8**), either agreeing to the protection works, disagreeing to the protection works or requiring additional information to be given (this enables the Building Surveyor to consider the proposal). The Relevant Building Surveyor must give the owner and the adjoining owner notice in writing of any determination.

### An adjoining owner who fails to respond to the notice within the required 14 days is deemed to have agreed to the proposed protection work.

Works must not commence until;

- there is agreement (actual or deemed).
- the matter has been determined by the building surveyor, or
- the matter has been determined by the Building Appeals Board (upon appeal).

The owner must carry out the works strictly in accordance with the protection works proposed after obtaining the necessary building permits or building approvals required.

Prior to commencement of protection works, the owner must;

- take out insurance against any damage caused by the proposed protection work to the adjoining property incurred during the building works and to cover any liabilities likely to be incurred to adjoining occupiers and members of the public during the carrying out of the building work for a period of 12 months after the building work is completed. The scope of the insurance cover is to be agreed upon by the owner and the adjoining owner.
- make a full and adequate survey of the adjoining property and record all existing cracks and defects in the adjoining property. This record must be signed or acknowledged as an agreed record of the condition of the adjoining property before the commencement of any protection work.

An owner or his/her agent may enter between the hours of 8:00am and 6:00pm on any adjoining property to carry out the protection works provided not less than 24 hours notice is given.

The adjoining owner/occupier must not refuse to admit the owner or his/her agent/s onto the adjoining property.

Within 2 months of the completion of protection works, the owner must serve on the adjoining owner and the Relevant Building Surveyor a complete set of plans, drawing and specifications showing the protection works actually carried out.

### **The Building Surveyors Role**

The Relevant Building Surveyor acts as an independent decision maker in relation to protection work. The owner should provide the Relevant Building Surveyor with information that will enable the Relevant Building Surveyor to determine the appropriateness of the proposed protection work if the adjoining owner disagrees with the proposal or requests further information.

The Relevant Building Surveyor should refrain from acting as an arbiter where there is disagreement. If the determination is challenged via an appeal to the Building Appeals Board, then the Relevant Building Surveyor should provide the Building Appeals Board whatever evidence and/or information is necessary in order for the Building Appeals Board to resolve the situation.

Even if the owner and adjoining owner have agreed to the protection works, the Relevant Building Surveyor should ensure that the design of the protection work and the appropriateness of the protection work provide the level of protection and safety required by the Building Act. This may include inspection of the protection work during construction, issuing of building notices and orders as required under Part 8 of the Act.

### **Owner to arrange insurance cover (Section 93 of the Building Act 1993)**

Although the Building Surveyor does not need to be provided with a copy, the owner is required under this section to obtain an insurance policy in the favour of the adjoining owner before protection work begins. It is recommended that owners seek the advice of professional insurance brokers or agents to ensure the requirements of this section are met satisfactorily. Non-compliance involves a statutory offence of up to \$10,000 for an individual, or \$50,000 dollars for a body corporate.

There are two typical types of insurance. The application of each will vary depending on the size of the project. The two insurances are;

- (i) Home Building Insurance
- (ii) Contract Works Liability Insurance

Generally the builder should already be carrying either of these forms of insurance. Where protection work is required, the building owner must ensure that;

- a) Their name is specifically mentioned on the policy;
- b) The policy includes the 12 month extension beyond works completion (this provision is not a standard clause in these policies);
- c) The policy is specifically endorsed to include protection of adjoining property and Part 7 of the Building Act 1993 (Many policies are not specific in relation to these matters).

### **Survey of adjoining property (Section 94 of the Building Act 1993)**

Before an owner commences protection work, the owner or their agent, and the adjoining owner or their agent, must make an acknowledged record of any existing defects in the adjoining property which could potentially be damaged by the proposed building works. This section is to protect both parties, as it provides the owner with evidence against false claims of damage, and provides the adjoining owner with evidence of existing conditions to compare with damage allegedly caused by the work. Both parties should sign every document relating to the survey, whether in the form of a description or a photograph.

### **Entry on adjoining property (Section 95 of the Building Act 1993)**

This section provides the owner with the right to enter the adjoining owner's property, on the condition of giving the adjoining owner the required or agreed notice, to carry out a survey of the adjoining property and the protection work itself.

### **Adjoining owner and adjoining occupier not to obstruct owner (Section 96 of the Building Act 1993)**

This section makes it an offence for the adjoining owner to refuse admission, obstruct, or hinder the owner or the owner's agent in carrying out the survey or protection work, provided the required or agreed notice has been given. The penalty is 10 units, plus 1 unit for every day of continued refusal of entry, obstruction or hindrance.

This provision only allows for protection work to be carried out. It does not automatically give the builder the right to enter the property to carry out building work. To gain access to carry out building work, the builder will require a separate civil agreement between the builder and adjoining owner.

## PROTECTION WORKS NOTICE CHECKLIST

The following forms/ information/ documentation listed below are required to form part of the Protection Work Notice which is to be served to the adjoining owner where the Building Surveyor has determined it necessary for protection work to be carried out to their adjoining property.

- A completed and signed **Form 7** with the correct information provided from the Owner/Agent.
- A copy of the **Form 8** to each adjoining owner/s  
(A copy kept by adjoining owner, a copy sent to the Building Surveyor and a copy returned to you)
- A copy of the proposed building plans which relate to the protection measures for the adjoining property.  
(site plan, floor plan, elevations, sections, cut & fill plan, retaining wall plan, etc.)
- A copy of the structural plans which relate to the protection measures for the adjoining property.  
(footing & structural framing design, underpinning design, retaining wall design)
- A Re-establishment survey carried out by a licensed land surveyor identifying the true title boundaries.  
(only applicable when carrying out building works on the boundary)
- A description of the protection measures to be carried out to the adjoining property with an understanding of the required insurance obligations and adjoining property survey report.  
(see the 'Protection Work Measures' template attached)
- Methods of serving protection notices to adjoining owners include;
  - Personally hand delivered to the adjoining owners in which case, a declaration confirming all documents served on them was received  
(see declaration form attached)
  - Sent by ordinary post to the persons usual or last known place of residence. An email from the agent or owner serving the documents must be sent this office as evidence of being served (if no response in accordance with the Form 8 is received after 14 days it is deemed consent). Please note when using this method you must allow 4 days for the service of the notice and service of the response in total 22 days.

### **NOTE:**

A **complete duplicate** of all protection notice forms and supporting documentation which was served to the adjoining owner as part of the protection notice package is to be submitted to this office for assessment by the Building Surveyor.

If the protection notice is correctly served to the satisfaction of the Relevant Building Surveyor and no response is received after 14 days, it is deemed under the Building Act 1993 that the adjoining owner has agreed with the proposed protection measures. In this instance provide a proof of service by completing the enclosed Statutory Declaration if no response from the adjoining owner or their agent is received after 14 days.

If the Building Surveyor deems that the details served to the adjoining owner/s do not include the relevant documentation from the checklist above or that the design of the protection work or appropriateness of the protection work does not provide a level of protection and safety required by the Building Act 1993, you will be required to re-serve the protection works correctly to the adjoining owner.

## **EXAMPLE: Nature & Details of proposed protection work**

The following protection measures outlined below relate to scenarios which may be applicable to your proposed building works. These may be used as guidelines as to how to describe the required protection measures to your adjoining properties affected by your building works on FORM 7.

### **Construction of WALLS and associated FOOTINGS On or Near the Adjoining Boundary**

#### Protection Measures:

1. The adjoining property in the immediate vicinity of the proposed boundary works shall be hoarded off to protect adjoining property / occupants against damage / injury. This may require a temporary barrier (chain wire fence) to be installed at a location on the adjoining property agreed upon by the adjoining owner whilst the wall is being constructed.
2. Construction above ground level shall be undertaken from scaffolding or the like which will have adequate measures to safe guard debris and building materials from falling off. (*ONLY applicable where scaffolding on adjoining property is required*)

#### Supporting Comments which may be used (NOT MANDATORY):

- The builder will excavate the new footings with care and diligence to ensure that there is no adverse impact on the adjoining structure, garden beds, paved areas or trees.
- Placement of the reinforcement, mandatory notification stage inspection and pouring of the footings as soon as practical and in a continuous work schedule. The proposed footings shall under no circumstances undermine the adjoining existing footings.
- Should any damage be agreed to have occurred to the adjoining property that can be attributed to building work, the damaged area shall be reinstated to the satisfaction of the adjoining owner and the builder.

### **Construction of a Wall Above the Height of Adjoining Building on the Boundary (in the airspace of adjoining property)**

#### Protection Measures:

1. The roof of the adjacent structure shall be protected by the careful placement of plywood sheeting, solid planking or other suitable protective material for the duration of the works. The builder shall carry out the works to minimise the potential for any debris to fall onto the adjoining roof.

#### Supporting Comments which may be used (NOT MANDATORY):

- The builder shall ensure the adjoining roof gutters will be clear of debris with roof drainage maintained as per the original condition at all times.
- The builder shall ensure that the roof surface and surrounding areas will be cleaned to the original condition and any damage that is agreed and deemed to have occurred as a result of the works will be repaired/ reinstated to the satisfaction of the adjoining owner.

### **Site Cuts and Construction of Retaining Walls On or Near the Adjoining Boundary**

#### Protection Measures:

1. The excavations shall be adequately fenced or otherwise guarded against being a danger to life or the adjoining property.

#### Supporting Comments which may be used (NOT MANDATORY):

- Prior to the site cut near the boundary the builder will ensure the soil conditions are consistent with the soil report provided for the site and that the excavation recommendations in the soil report are followed at all times.
- The builder will carry out the required site cut with care and diligence to ensure that there is no adverse impact on the adjoining structure, garden beds, paved areas or trees. The proposed site cut shall under no circumstances undermine the adjoining existing footings.
- The builder shall arrange for the required retaining walls to be installed as soon as practical and in a continuous work schedule.
- Should any damage be agreed to have occurred to the adjoining property that can be attributed to building work, the damaged area shall be reinstated to the satisfaction of the adjoining owner and the builder.

### **Underpinning Works**

#### Protection Measures:

1. The underpinning works including the sequence, procedure and nature of the works shall be carried out strictly in accordance with the certified engineers design documentation to form part of the approved building permit documents.
2. The builder shall ensure that the excavations are dug and poured on the same day and the underpinning pads are of the dimensions, width, depth etc. stipulated by the structural engineer. All underpinning pads shall be inspected and approved by the structural engineer or the Building Surveyor/ Inspector prior to pouring.

#### Supporting Comments which may be used (NOT MANDATORY):

- Should any damage be agreed to have occurred to the adjoining property that can be attributed to building work, the damaged area shall be reinstated to the satisfaction of the adjoining owner and the builder.

## PROTECTION WORK NOTICE (Form 7)

**To**

Adjoining Owner Name: .....

Postal Address: .....

Contact Person: ..... Telephone: .....

**Relevant Building Surveyor:** Philip Watt - BSP Melbourne      **Email:** info@bspmelb.com.au

**Postal address:** PO Box 126, ESSENDON NORTH VIC 3041      **Phone:** 93370183

**From**

Owner/Agent Name: .....

Postal Address: .....

Contact Person: ..... Telephone: .....

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

**Details of proposed building work:** *(Owner/ Agent MUST complete Sections A – J)*

**A. Property Address:** .....  
*(Construction Site)*

**B. Adjoining Property Address:** .....  
*(Affected Neighbour's Site)*

**C. Location of Protection Work:** *(Please Tick where applicable)*

- On common boundary       On your adjoining property       In the airspace above your building  
 Within our building site       Other: .....

**D. Estimated commencement date of protection work:**

.....

**E. Estimated duration of protection works:**

.....

**F. Proposed building works requiring protection to the adjoining property:**

- Construction of Wall and associated Footings on or near the adjoining boundary  
 Site cuts / construction of retaining walls on or near the adjoining boundary  
 Construction of a Wall on the boundary adjacent to an adjoining building on the common boundary  
 Underpinning of adjoining building's footings  
 Other: .....

**G. Nature and Details of proposed protection work:** *(specify the protection measures proposed)*

.....  
.....  
.....  
.....

**H. Documentation / Plans accompanying this Protection Notice: (Please tick box where applicable)**

- |   |   |
|---|---|
| <input type="checkbox"/> RBS Determination (Form 6) <b><u>Mandatory</u></b> | <input type="checkbox"/> VBA protection statement <b><u>Mandatory</u></b>   |
| <input type="checkbox"/> Architectural / Design Plans                       | <input type="checkbox"/> Structural Engineer Plans                          |
| <input type="checkbox"/> Soil Report  | <input type="checkbox"/> Engineering Reports                                |
| <input type="checkbox"/> Survey Plans                                       | <input type="checkbox"/> Site plan showing <u>protection works</u> involved |

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**I. Method of Serving Protection Notice to Adjoining Owner: (Please tick box where applicable)**

- In person by hand
- Ordinary Mail (*email from owner/agent is required stating when day the notice and relevant documents was served*)

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**Owner's Obligations:**

Prior to the commencement of protection work the Owner or Builder will;

- Carry out a *Dilapidation Survey* of the adjoining property affected by the building works pursuant to Section 94 of the Building Act 1993, and
- Obtain *Insurance* in favour of the adjoining property pursuant to Section 93 of the Building Act 1993 and extend a further 12 months after the completion of building works.

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**J. Signature:** ..... **Date:**.....  
*Owner / Agent serving Form 7 & 8 Protection Notices:*

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**NOTES:**

Under section 85 of the **Building Act 1993**, 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; or
- (ii) disagreeing with the proposed protection work; or
- (iii) requiring more information.

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

In 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 Form 8)

**Protection Work Insurance:**

Prior to commencement of protection works in respect to the adjoining property, the owner/builder shall arrange for protection works insurance in favour of the adjoining property to be carried out in accordance with Section 93 of the Building Act 1993. The protection works insurance shall be for an amount agreed to with the adjoining property owner and against any possible damage to the adjoining property and any liabilities likely to be incurred by the adjoining occupiers. The contract of insurance shall be extended for a minimum 12 months after the completion of the building work.

**Adjoining Property Survey:**

Before commencement of protection work, the owner in conjunction with the adjoining owner or their agent must make an acknowledged record in writing and by any other means (i.e. photographs) of any existing cracks or other defects in the adjoining property.

This adjoining property survey shall be kept to protect both parties, as it provides the owner with evidence against false claims of damage, and provides the adjoining owner/s with evidence of existing conditions to compare with potential future damage caused by the proposed building work. Both parties are to sign every document relating to the survey.

**Hours of Access:**

In accordance with Section 95 of the Building Act 1993 the owner or agent of the owner may enter the adjoining property between the hours of 8am to 6pm with not less than 24 hours notice provided (except where agreed otherwise) to the adjoining owner. Access is permitted only for the purpose of carrying out protection works or works agreed upon between the parties.

In the course of carrying out protection works under the Building Act 1993 the owner or their agent may without any unnecessary damage remove any furniture or fittings on the adjoining property which obstruct the carrying out of protection works.

**Protection Works Scope**

The protection works notice only deal with the protection of the adjoining property and not matters in relation to the design, scope of work, protection of public, noise attenuation etc... These matters are all the jurisdiction of the Local Council and works will need to be undertaken in accordance with Council policy and procedures with regard to these issues.

**PROTECTION WORK RESPONSE NOTICE (Form 8)**

**To**

Owner / Agent Name: .....

Postal Address: .....

Contact Person: ..... Telephone: .....

**Relevant Building Surveyor:** Philip Watt - BSP Melbourne      **Email:** info@bspmelb.com.au

**Postal address:** PO Box 126, ESSENDON NORTH VIC 3041      **Phone:** 9337 0183

**From**

Adjoining Owner/s Name: .....

Postal Address: .....

Contact Person: ..... Telephone: .....

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**Adjoining Property Address:**

.....  
(Construction Site)

**Address of my Adjoining Property:**

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**Response:** *(Please Tick where applicable)*

In accordance with Section 85 of the **Building Act 1993**, I hereby respond to the notice served on me by the Owner under that section and –

(i) AGREE to the proposed protection work

(ii) DISAGREE to the proposed protection work for the following reasons: *(Please list below)*

.....  
.....  
.....  
.....

(iii) REQUEST THE FOLLOWING FURTHER INFORMATION: *(Please list below)*

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.....  
.....  
.....

**Signature:** .....  
*(Adjoining Owner or Agent of Adjoining Owner)*

**Date:** .....

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**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**. Failure to respond to Form 7 will be taken as agreement to the proposed protection work.

## PROTECTION WORK RESPONSE NOTICE (Form 8)

**To**

Owner / Agent Name: .....

Postal Address: .....

Contact Person: ..... Telephone: .....

**Relevant Building Surveyor:** Philip Watt - BSP Melbourne      **Email:** info@bspmelb.com.au

**Postal address:** PO Box 126, ESSENDON NORTH VIC 3041      **Phone:** 9337 0183

**From**

Adjoining Owner/s Name: .....

Postal Address: .....

Contact Person: ..... Telephone: .....

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**Adjoining Property Address:**

.....  
(Construction Site)

**Address of my Adjoining Property:**

.....

**Response:** *(Please Tick where applicable)*

In accordance with Section 85 of the **Building Act 1993**, I hereby respond to the notice served on me by the Owner under that section and –

(i) AGREE to the proposed protection work

(ii) DISAGREE to the proposed protection work for the following reasons: *(Please list below)*

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.....  
.....  
.....

(iii) REQUEST THE FOLLOWING FURTHER INFORMATION: *(Please list below)*

.....  
.....  
.....  
.....

**Signature:** .....      **Date:** .....  
*(Adjoining Owner or Agent of Adjoining Owner)*

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**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**. Failure to respond to Form 7 will be taken as agreement to the proposed protection work.



**PROTECTION WORK RESPONSE NOTICE (Form 8)**

**To**

Owner / Agent Name: .....

Postal Address: .....

Contact Person: ..... Telephone: .....

**Relevant Building Surveyor:** Philip Watt - BSP Melbourne      **Email:** info@bspmelb.com.au

**Postal address:** PO Box 126, ESSENDON NORTH VIC 3041      **Phone:** 9337 0183

**From**

Adjoining Owner/s Name: .....

Postal Address: .....

Contact Person: ..... Telephone: .....

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**Adjoining Property Address:**

.....  
(Construction Site)

**Address of my Adjoining Property:**

.....

**Response:** *(Please Tick where applicable)*

In accordance with Section 85 of the **Building Act 1993**, I hereby respond to the notice served on me by the Owner under that section and –

(i) AGREE to the proposed protection work

(ii) DISAGREE to the proposed protection work for the following reasons: *(Please list below)*  
.....  
.....  
.....  
.....

(iii) REQUEST THE FOLLOWING FURTHER INFORMATION: *(Please list below)*  
.....  
.....  
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.....

**Signature:** .....      **Date:** .....  
*(Adjoining Owner or Agent of Adjoining Owner)*

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**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**. Failure to respond to Form 7 will be taken as agreement to the proposed protection work.

# STATUTORY DECLARATION

I, (Owner / Agents name).....

being the Owner / acting as an Agent on behalf of the Owner

Of .....

(insert location of proposed building work site above)

in the state of Victoria do solemnly and sincerely declare:

3. That I have been required to provide protection for adjoining property pursuant to Regulation 111 of the Building Regulations 2018 ("the regulations")
4. That in accordance with Section 84 of the Building Act 1993 ("the Act") I served on the adjoining owner/s of the adjoining property situation at:

**Adjoining Property:** .....

(insert address of adjoining property)

**Served by;** (Please tick)  In person by hand or  Ordinary Mail

**Date Documents were served:** ..... / ..... / .....

a notice in accordance with Form 7 of the Regulations accompanied by three copies of Form 4 was served together with plans / information of the proposed building works as follows:

- RBS Determination (Form 6) Mandatory**
- Site plan showing protection works involved**
- Architectural / Design Plans:** (Please complete details below)

Prepared by: ..... Sheets: .....

Rev: ..... Dated: .....

- Structural Engineering Plans:** (Please complete details below)

Prepared by: ..... Sheets: .....

Rev: ..... Dated: .....

- Soil Report:** (Please complete details below)

Prepared by: ..... Sheets: .....

Rev: ..... Dated: .....

- Survey Plan:** (Please complete details below)

Prepared by: ..... Dated: .....

- Other .....

.....

**Signature:** .....

(Owner /Agent serving Form 7 & 8 Protection Notices)

**Date:**.....