
SERVING OF PROTECTION WORK NOTICES

Guide to owners / agent of owners

Due to the nature and location of the proposed building works, you may need to take measures to protect an adjoining property during construction or demolition to prevent damage to adjoining properties. This is usually “underground” protection and / or “overhead” protection.

What is Adjoining Property?

An adjoining property as defined under the Building Act 1993 is 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 building work.

What is Protection Work?

Protection work as defined under Building Act 1993 is:

- a) Permanent or temporary work of
 - Underpinning, including the provision of vertical support, lateral support, protection against variation in earth pressures, provision of ground anchors and other support for adjoining property;
 - Shoring up of adjoining property;
 - Over head protection for adjoining property;
 - Other work designed to maintain the stability of adjoining property or to protect adjoining property from damage from building works or

- b) Any works or use of equipment necessary for the provision maintenance and removal of work as above, whether or not the work or equipment is carried out or used on, over, under or in the airspace above the land on which the building work is or is to be carried out or the adjoining property.

Procedure for Serving the Protection Work Notices (Forms 3 and 4)

Step 1

Obtain ownership details of the adjoining property from the local council. When asking for this information you must mention that you require this for the purpose of serving protection works notices as required by the Building Act 1993.

Step 2

Prepare a cover letter. The following matters should be included as required by S84:

- Details of adjacent property affected by the work.
- Describe the extent of the 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 dilapidation report has been or will be carried out (ie. photos, written description of existing conditions, etc.) and make reference to the builder holding adequate insurance.
- State the programme for the works and give appropriate commencement and duration;
- List all of the protection measures (mention that temporary hoardings will be erected and that safe building procedures will be adopted to ensure protection of persons and property.).
- Include relevant attachments to enable the proposal to be assessed – plans, structural details, computations, soil reports etc.

Step 3

Include the following documents as relevant:-

- A set of structural drawings (showing bulk excavation, site retention, footings, etc), soil report, computations, architectural drawings and details of protection measure proposed.
- Details of any overhead protection measures such as hoarding plans, scaffolding details, catch fans, roof planking plans, etc.
- Complete Form 3, listing all the relevant documents.

Step 4

- a) Deliver the packages in person or send via registered post along with three copies of a the Form 4 completed as best as possible to each adjoining owner (three copies are required so that one copy is kept by adjoining owner, one copy returned by you, and one copy returned to Building Surveyor).
- b) Send a duplicate of the entire package to the Building Surveyor (include proof of how documents were served on adjoining owner ie certified mail, by hand etc. by completing the enclosed Statutory Declaration as evidence that the documents have been served and on what date).
- c) Completion of the Form 3 & 4 should be accurate and served correctly in order to avoid this process from being repeated if incorrectly carried out.

Step 5

The adjoining owner completes the Form 4's and sends one to you, one to the Building Surveyor and keeps one for their own records. If the adjoining owner does not respond within 14 days it will be taken that they have agreed to the proposed protection works.

Further Protection Work Information

Building Act 1993 requirements once protection works have been served.

1. Pursuant to S86, if the adjoining owner agrees or is deemed to agree to the proposed protection works, the owner may proceed to carry out the protection work after obtaining the necessary permits or approvals required by the Building Act or the Building Regulations.
2. Pursuant to S87 if the adjoining owner disagrees or requests for further information on the Form 4 the relevant Building Surveyor must examine the proposal for protection works and determine the appropriateness of the work.

Prior to making a determination, the relevant Building Surveyor may require the owner to give more information to the adjoining owner and if more information is requested the owner must make a copy of that information available to the adjoining owner.

Once a determination is made by the relevant Building Surveyor it must be given to the owner and adjoining owner in writing under S87 of the Building Act.

In making this determination the relevant Building Surveyor may make any inquiries, but is not required to give any person a hearing.

Any party can appeal the determination made by the relevant Building Surveyor under S87, to the Building Appeals Board within 14 days of the determination being issued.

3. Pursuant to S93 before any protection work commences in respect of an adjoining property, an owner must ensure a contract of insurance is taken out against damage by the proposed protection work to the adjoining property and any liabilities likely to be incurred to adjoining occupiers and member of the public during the carrying out of the building work and for a 12 month period after the building work is completed.

The contract of insurance must be agreed by both parties in relation to the amount and insurer or in the event of a dispute as determined by the Building Appeals Board and the owner must lodge a copy of the insurance with the adjoining owner before the commencement of the protection work.

The insurance contract needs to be renewed or extended as often as may be necessary during the carrying out of the building work and for 12 months after that work is completed the owner must lodge a copy of the renewal or extension of the insurance contract with the adjoining owner as soon as it is practicable once received.

4. Pursuant to S94 prior to protection works commencing the owner/agent of owner and the adjoining owner must carry out an existing condition survey of the adjoining property recording in writing or by other means all existing cracks and defects in the adjoining property.

The existing condition survey of the adjoining property must be signed or acknowledged by both parties and can be used as admissible evidence in any proceedings relating to the adjoining property and is evidence of the condition of the adjoining property at the time the record was made.

5. Pursuant to S95 the owner or agent of owner may enter the adjoining property between 8am and 6pm to carry out the condition survey or to carry out the protection work as required, agreed or determined.

The owner must give the adjoining owner not less than 24 hours notice or such other notice as may be agreed between the two parties.

During the carrying out of any protection work an owner may without doing any unnecessary damage remove any furniture or fittings in the adjoining property which can obstruct the carrying out of the work.

6. Pursuant to S97 the owner must pay to the adjoining owner all costs and expenses necessarily incurred by the adjoining owner in assessing the proposed protection works and in supervising the carrying out of the protection works as agreed between the two parties or in the absence of an agreement as determined by the Building Appeals Board.

7. Pursuant to S98 an owner must compensate any adjoining owner for inconvenience, loss or damage suffered by the adjoining owner or occupier in relation to the carrying out of the protection work.

8. Pursuant to S101 the owner must no later than 2 months after completion of any protection work carried out, provide to the adjoining owner and relevant Building Surveyor a complete set of plans, drawings and specifications showing the protection work which has actually been carried out in respect of the adjoining property. The Relevant Building Surveyor is required to forward a copy of these documents to the relevant Council.

For further details contact ASA Building Consultants Pty Ltd on 9571 3088.

Enclosed 2 copies of Form 3
 3 Copies of Form 4
 1 Statutory Declaration
 (Electronic versions on MS Word are available on request)

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