

Practice Note 20-2017

Protection Work Process

Issued September 2017

This updates previous Practice Note 20-2016 issued December 2016.

A Protection of Adjoining Property process flowchart is included at the end of this Practice Note.

1. SUMMARY

Building work may sometimes adversely affect adjoining properties. Owners proposing to build have obligations under the Building Act 1993 (the Act) to protect adjoining property from potential damage.

If building work is close to, or adjacent to, the adjoining property boundary, protection work may be required to ensure that the adjoining property is not affected.

This Practice Note has been divided into sections to assist the reader in understanding their roles and responsibilities:

- PART A – Protection work: Information for the Relevant Building Surveyor
- PART B - Protection work: Information for owners, adjoining owners, and builders
- PART C: Protection work: Some common questions and answers

2. BACKGROUND

Requirements relating to protection of adjoining property are contained in Part 7 of the Act and regulation 602 of the Building Regulations 2006 (the Regulations).

Protection work is only required when the relevant building surveyor (RBS) determines that it is necessary.

The information in this Practice Note sets out the roles and responsibilities of the RBS, the owner, adjoining owner and the builder.

It provides information to enable each party to carry out their functions under the Act and, along with other information required to be provided, to minimise the potential for appeals and disputes to arise.

The owner, adjoining owner and the builder can play a positive role in reaching a successful outcome when protection work is required, but each needs a clear understanding of their role (refer Part B – Protection work: Information for owners, adjoining owners and builders).

This document should facilitate a consistent approach to implementing the protection work process.

3. WHAT IS PROTECTION WORK?

Protection work should not be confused with building work and is inherently different in its nature, even though protection work may be associated with building work.

Protection work provides protection from damage to the adjoining property. This includes, but is not limited to:

- Under-pinning of the adjoining properties' footings
- Retaining walls where site cuts are proposed
- Barriers to prevent material from falling on the roof or other part of an adjoining property
- Propping of party walls or common walls.

4. DEFINITIONS

Adjoining owner

The owner of an adjoining property.

Adjoining property

Land (including any street, highway, lane, footway, square, alley, and right of way) situated in relation to the site on which building work is to be carried out so as to be at risk of significant damage from that building work.

Owner

In relation to a building, means the owner of the land on which the building is situated.

Protection work

Work that may include, however, is not limited to:

- Underpinning, including vertical support, lateral support, protection against variation in earth pressures, ground anchors and other means of support for the adjoining property;
- Shoring up of the adjoining property including retaining walls and bored piers;
- Overhead protection for adjoining property;
- Other work designed to maintain the stability of adjoining property or to protect it from damage from building work including retaining walls and bored piers;
- Any work or use of equipment necessary for the provision, maintenance and removal of work referred to above,

whether or not the work or equipment is carried out or used on, over, under, or in the air space above the land on which the building work is, or is to be carried out, or the adjoining property.

PART A: Protection work: Information for the Relevant Building Surveyor

5. RBS ROLE AND RESPONSIBILITIES

5.1 Background

It is the role of the RBS to determine whether protection work is required. Until such time as the RBS makes a decision that protection work is required the process cannot commence.

The RBS can play a positive role in assisting all parties to reach a successful outcome when protection work is required by advising all parties involved of information contained in this document. But the RBS must take care to ensure that they do not become an advocate for one party or the other.

Appeals against the RBS decisions regarding protection work are to be determined by the Building Appeals Board (BAB). This Practice Note provides the RBS with information to assist with carrying out their functions under the Act and, along with other information in this Practice Note, to minimise the potential for disputes to arise.

5.2 When should protection work be required?

Some building practitioners think that protection work should be mandated for any building work that falls within an arbitrarily determined figure like the 'one metre rule'.

The problem with this type of approach is that it is far too simplistic and does not take into account the reality that no two developments or allotments are the same.

Determining the need for protection works should be based on a holistic assessment of the project taking into account, but not limited to, the following matters:

- site conditions;
- property information;
- engineering & architectural design;
- siting - the proposed works to adjoining buildings on or near the boundary.

Practice Note 20-2017

With this type of approach the RBS is better placed to assess if the proposed building work is likely to cause significant damage to the adjoining property.

It should also be noted that the “adjoining property” as defined in the Act must be at risk of significant damage from the building work. Although “significant damage” is not defined in the Act, reasonable and individual consideration should be given to each application for a building permit received by the RBS, in order to determine whether protection work is required as a reasonably foreseen consequence of the building work.

Various triggers should be established to consider asking for more information if there is not enough at hand. The definitions of adjoining property and protection work should be considered by the RBS when assessing the building permit application regardless of the type and size of the project.

Many complaints and disputes have arisen where protection work should have been required at the building permit application stage, and for various reasons was not attending to at the first opportunity. When the RBS or their building inspector are making the first site visit, or subsequent inspections, they should assess the site to determine if protection work is required and take action to address this situation early in the building work process.

The requirement for protection work can take place during construction if the RBS considers it is appropriate to require protection work due to a change in circumstances.

Regulations 302 to 304 require every application for a building permit to include allotment plans that show the relationship of the building to any part of a building on an adjoining allotment. Anything built near the boundary may require protection work. A careful assessment of soil reports will give an indication of local soil conditions for site cuts and appropriate battering of soils. Investigation should also be undertaken to locate existing sewer and stormwater drainage systems.

Many incidents that have led to investigations, inquiries and prosecutions involve site cuts where the RBS did not require protection work, but should have done. In some cases, the RBS could not initially have known that protection work was required, but did nothing to address the problem once aware of the need. This leaves the RBS exposed on two fronts — failing to require the protection work, and failing to implement the proper enforcement procedures when the adjoining owner makes a legitimate complaint. The RBS needs to document clearly the decision not to require protection work, as they could find themselves having to defend such a decision.

5.3 Administration

Having decided that protection work is required, the RBS sets in motion a process that provides both the owner and adjoining owner with certain rights and obligations under the legislation. It is critical that the administrative process is carried out correctly, in order for those rights to be exercised.

5.4 Independence of the RBS

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

If the determination is challenged via an appeal to the BAB, then the RBS should provide the BAB with whatever evidence and/or information is necessary in order for the BAB to resolve the situation.

The RBS should refrain from acting as an arbiter where there is disagreement between the owner and an adjoining owner, and direct the parties to Part 10 of the Act regarding referral of a dispute to the BAB.

Even if the owner and adjoining owner have agreed to the protection work, the RBS should ensure that the design of the protection work and the appropriateness of the protection work

Practice Note 20-2017

provide the level of protection and safety required by the Act. This may include inspection of the site prior to issuing the building permit, inspection of the protection work during construction, issuing of a Direction to Fix, building notice or building order as required under Parts 4 or 8 of the Act for any non-compliances or changes in circumstances.

If the RBS determines the proposed protection work is inadequate, and despite the adjoining owner consenting to the proposed protection work; the RBS should not issue a building permit.

6. THE ACT AND REGULATIONS

6.1 Background

Regulation 602 provides the RBS with the discretion to require protection work in respect of an adjoining property. The RBS should discuss with the applicant the reasons for requiring protection work, so the owner can address those issues in the details they provide to accompany the Protection Work Notice (Form 3) that is served on the adjoining owner.

The RBS should also explain that the prescribed form must be filled out correctly and served in the proper manner. It is not appropriate for the RBS to prepare or serve these documents.

However, it is prudent to provide the RBS with a copy of the proposed form before serving the notice on the adjoining owner and RBS. This provides the RBS with an opportunity to notify the owner of deficiencies in the proposed form or additional information that should accompany the form.

The owner will require information from a number of specialists including the builder and engineers involved in the design of the building work and protection work in order to provide the adjoining owner with adequate information about the proposed work.

6.2 Protection of Adjoining Property – regulation 602 and Part 7 of the Act

Once protection work is required by the RBS under regulation 602, and Part 7 of the Act, the RBS is required to administer certain procedures.

Regulation 602 provides additional detail for those procedures.

The RBS must not prepare the protection work documentation on behalf of the owner. It is the owner's responsibility to prepare and serve the Protection Work Notice (Form 3) together with (3 copies of the Form 4 – see below) supporting documentation on the adjoining owner and the RBS.

An adjoining owner is required to respond in accordance with Protection Work Response Notice (Form 4) to both the owner and the RBS.

The RBS may provide advice to the owner and adjoining owner to ensure sufficient details are provided with the Protection Work Notice.

Careful consideration by the RBS must be given to the appropriateness of the Protection Work Notice (Form 3) together with supporting documentation that has been served on the adjoining owner and the RBS, to determine if it adequately details the:

- building work;
- details of the proposed protection work including the nature, location, time and duration; and
- any other information relevant to the work.

Though not specifically stated under Part 7 of the Act or Part 6 of the Regulations, the RBS must consider the information. It would be unprofessional to accept protection work that would not or could not work.

This consideration also applies if the Protection Work Response Notice (Form 4) completed by the adjoining owner indicates agreement with the proposed protection work. The RBS should consider the information and refuse to issue a building permit if he or she disagrees with the protection work design.

Section 84 - Notice of Building Work

This is self-explanatory, but if advising the owner, the RBS should be satisfied that sufficient details are provided under sub-section (2) for an assessment to be made:

Practice Note 20-2017

[(2)(a) prescribed details of the proposed building work as at the date of the notice; and (b) prescribed details of the proposed protection work setting out the nature, location, time and duration of the protection work; and (c) any other prescribed information.]

Section 85 - Adjoining Owner Must Respond

The RBS should be satisfied that the notice has been served correctly, in order to verify the 14 day response period. (Refer section 236 of the Act).

Ideally the RBS should receive evidence from the owner of service of the notice on the adjoining owner, such as registered mail receipts.

Section 85(1) (a)

If this clause is applicable, then section 86 applies.

Section 85(1) (b) (i) -

If applicable, this clause initiates the provisions of section 87.

Section 85(1) (b) (ii) -

A requirement for more information is for the purposes of the RBS to consider the protection work proposal and initiates provisions of section 87(2).

There has been some confusion as to the application of the 14 day response period where a notice under section 85(1) (b) (ii), requiring more information is received.

The purpose of such a response notice is to 'enable the proposal to be considered by the RBS'. It is not for the purpose of further consideration by the adjoining owner (unless the RBS considers it appropriate under section 87), in order to reach an agreement with the owner.

The 14 days referred to in this section is the period for giving a response notice under section 85 (1) (a) or (b). Once a response notice is received, then the 14 day period is at an end (there is no allowance for any supplementary information to be provided by the adjoining owner). There are no further time limits to be considered.

Once the 14 day period has ended, the timing of the process is in the hands of the owner and the RBS. Under section 87(2), the RBS must decide

whether a request for more information is appropriate. Where the RBS determines that the request is appropriate, they may ask the owner to provide more information under section 87(2). There are no time limits for the owner to provide the information, but it is in the interests of the owner to do this promptly.

If the RBS asks the owner for further information, the owner must make a copy available to the adjoining owner under section 87(2) (b). Under section 87(3), the RBS may decide to consult further with the adjoining owner. Again, there are no time limits set for this process.

If the RBS considers it appropriate for the adjoining owner to comment on the additional information, the RBS should provide reasonable time limits for that to occur. This is a matter of procedural fairness. If no agreement is reached between the owner and the adjoining owner, then the RBS is ultimately responsible for making a determination, in accordance with section 87.

Section 87 - Effect of disagreement or request for further information.

Where a notice under section 85(1) (b) (i) has been received the following applies:

Section 87(4) -

The RBS must make a determination as to the appropriateness of the protection work, but has discretion to ask for further information through inquiry under section 87(3).

Section 87(4) -

When satisfied the protection work is appropriate, the RBS must notify the owner and adjoining owner in writing, and include with the notification, advice of the prescribed period for appeal to the BAB against the decision required by regulation 602 (regulation 1601-prescribed period is 14 days).

Practice Note 20-2017

Where a notice under section 85(1) (b) (ii) has been received the following applies:

Section 87(2) -

Is self-explanatory, but consider whether it is appropriate or not to require more information.

Section - 88 Work not to be carried out until protection requirements met.

Section 88(1) -

It is an offence under section 88 of the Act for the owner to commence that part of the building work giving rise to the protection work or the protection work itself until:

- Agreement has been reached (section 88(1) (a)); or
- 14 days after the RBS has made a determination (section 88(1) (b) and section 146(1) (a)); or
- If an appeal is made, until such time as the BAB has made a determination (section 88(1) (c) and section 146(1) (b)).

The onus is on the owner to comply, but the RBS has an enforcement role under Part 8 of the Act pursuant to sections 106, 108, 111 and 113.

In serious safety situations, the MBS may be required to carry out enforcement under Part 8 of the Act pursuant to section 102.

Further, under section 146, the protection work cannot be commenced if:

- In the case of a determination having been made by the RBS under section 87, until such time that the 14 day appeal period (Regulation 1601) has lapsed; or
- In the case of an appeal being made within that period, until such time as the BAB has made a determination.

Section 88(2) -

- The owner must carry out the protection work in accordance with:
- An agreement that has been reached (section 88(2) (a)); or
- A determination made by the RBS (section 88(2) (b)); or
- A determination that has been made by the BAB (section 88(2) (c)).

Section 89, 90, 91

These provisions deal with emergency protection work and provisions for the relevant Minister to appoint an agent for absent or incapable owners. These sections of the Act are outside the scope of the RBS role.

Where an emergency situation arises, it is expected the MBS will take the appropriate action under Part 8, section 102 of the Act as necessary.

Section 92 - Adjoining owners may inspect plans

The adjoining owner has a right to inspect plans, drawings and specifications relating to the proposed building work free of charge. The RBS must make them available to the adjoining owner.

Section 93 to 100 inclusive

The RBS can play no role in the administration of these provisions. It is recommended that the RBS resist any request or temptation to assist in resolving any differences of opinion between the owner and the adjoining owner, particularly in relation to section 93 to 98. The RBS could however play an important role of providing information to the owner and adjoining owner with copies of the relevant sections of the Act, a copy of this practice note and explain the role and responsibilities of the RBS.

The BAB is the appropriate body for dispute resolution under these sections. Sections 99 and 100 are matters to be referred to the civil courts.

Section 101 - Lodgement of plans after the completion of protection work.

Section 101(1) -

The owner, within two months after completing the protection work, must serve on the adjoining owner and the RBS a complete set of plans, documents and specifications showing the protection work as constructed.

It should be noted that the owner can be prosecuted and a maximum penalty of 50 units applies if the owner fails to comply with this provision.

Section 101(2) -

The RBS is required to give a copy of those documents to the relevant Council.

Practice Note 20-2017

Note: The RBS can be prosecuted and a maximum penalty of 50 units applies if the RBS fails to comply with this provision.

7. EXCEPTIONS TO CARRYING OUT PROTECTION WORK

7.1 Background

The conventional method is for the owner to serve a "Protection Work Notice" (Form 3) and the adjoining owner to complete a "Protection Work Response Notice" (Form 4), under the provisions of Part 7 of the Act.

Regulation 603 provides another mechanism, where the building work being undertaken within the allotment provides inherent protection. In this case, the response of an adjoining owner to protection work is not necessary, subject to certain criteria being met.

7.2 A note of caution regarding regulation 603

Regulation 603 contains the provisions that relieve an owner from having to provide protection work in relation to adjoining property in accordance with Part 7 of the Act. However, certificates under paragraphs 603 (b) (i) and (ii) accompanying the application are not sufficient in themselves to satisfy the requirements of regulation 603. The RBS must ensure that paragraphs (a), (c) and (d) of the regulation are also satisfied.

Protection work should not be confused with building work. Regulation 603 provides an exception to a requirement for protection work which can be used only where the building work will not adversely affect the stability of, or cause damage to, the adjoining property, and the building work is not proposed to be carried out over, on, under, or in the air space of the adjoining property. Dual certification under section 238 of the Act can then be accepted by the RBS in accordance with regulation 603.

An example may be that the RBS allows tilt-up concrete panels to be installed up to the title boundary, and the temporary supports are on the construction site. This construction method may be considered appropriate to utilise certificates under regulation 603 (b) (i) & (ii).

It would be inappropriate to utilise certificates under regulation 603 (b) (i) & (ii) where site excavations are proposed and require temporary or permanent supports to protect the adjoining land or buildings, including concrete bored piers, retaining walls or the like.

Under regulation 603(b), the certificates must be provided to the RBS before the building work commences.

Once a Protection Work Notice under section 84 of the Act has been served on the adjoining owner, then associated rights of the adjoining owner are in force. Once in force the RBS cannot accept dual certification under regulation 603.

Careful consideration must be given to the consequences of using regulation 603. By removing the requirement to:

- serve the Form 3 on the affected adjoining owners;
- cause insurance cover under section 93 of the Building Act 1993 not to be required;
- cause a survey of the adjoining property not to be required;
- remove appeal rights of the adjoining owner to the Building Appeals Board,

the RBS and certifying engineers may find that their Professional Indemnity Insurance is the only insurance that will provide compensation to adjoining owners in the event something goes wrong.

7.3 Procedure

If the RBS determines that protection work is required for an adjoining property under regulation 602, then exceptions to carrying out protection work under regulation 603 can be used if:

- A Form 3 has not already been served by the owner on the adjoining owner, as this indicates a decision has been made not to use the exception under regulation 603 and confers certain rights under Part 8 of the Act on the adjoining owner.
- The building work that is the subject of the building permit is fully contained within

the allotment.

- No buildings are to be erected or building work is to be carried out on, over, under, or in the air space of the adjoining property. (Note: However, it is generally difficult to construct a wall on the property boundary without requiring access to the adjoining property for scaffolding, brickwork joint raking, or construction joint caulking). If there are no construction methods, such as ground anchors or similar, required within the adjoining property, and no requirement for party walls, underpinning or access over the adjoining property.
- The structural design of building work provides inherent protection, or eliminates the need for protection work and is carried out by a structural engineer who is a registered civil engineer and provides a certificate of compliance under section 238 of the Act for the design of that building work.
- The certified structural design must be independently checked by a second structural engineer who is a registered civil engineer who also provides a certificate of compliance under section 238 of the Act, certifying that the design complies with the Act and Regulations. This requirement for an independent check only applies to the part of the building work that incorporates or eliminates the need for protection work.
- The relevant building surveyor is satisfied that the building work will not adversely affect the stability of, or cause damage to, the adjoining property.
- The building permit applicant provides the adjoining owner with copies of the certificates issued by the design engineer and the checking engineer and relevant documents (including, for example, information on the staging and duration of works) referred to in those certificates. This must happen before the building work is commenced.

8. BUILDING NOTICES AND ORDERS REQUIRING PROTECTION WORK TO BE DONE

In some case that the RBS may have no other option than to issue a building order to stop building work where adjoining properties are at risk as a result of the building work or protection work being undertaken.

This may come about when protection work was not considered necessary prior to the issue of a building permit, but during construction it becomes evident that protection work is required.

The RBS needs to be aware that section 119 of the Act states that a person who carries out work in accordance with the order is not required to obtain a building permit or comply with the Regulations, unless the RBS so directs.

A building order to stop building work can be issued where the building work contravenes the Act or Regulations, or is a danger to life, safety or health of a person, or affects the support of an adjoining property. It is therefore not appropriate to stop building work where compliance with the administrative provisions contained in sections 93-100 of the Act have not been complied with.

It is expected that the RBS will inform the MBS immediately if there is a danger to life, safety or health of a person or affects the support of an adjoining property, so the MBS can assess the situation. It is expected that upon being notified, the MBS will immediately assess the situation and determine if enforcement actions under Part 8 of the Act should be taken (i.e. issue Emergency Order pursuant to section 102 of the Act).

It is important for the RBS to understand that in issuing the building order to stop building work, that the person in charge of work is directed to stop all building work. If the RBS requires protection work to be carried out to make the situation safe, the RBS should consider whether it is appropriate and (in conjunction with advising the MBS):

- issue a building order for minor work requiring certain protection work to be undertaken to make the situation safe,

- and as quickly as possible, and/or
- issue a building notice requiring the protection work process pursuant to Part 7 of the Act to recommence (where applicable).

If this is not done it is possible that an owner may do protection work without first serving protection work notices and the requirements of surveys and insurance may not be completed. This may give rise to disputes, causing delays.

PART B: Protection work: Information for owners, adjoining owners, and builders

9. OWNER'S RIGHTS AND OBLIGATIONS

The Building Act 1993 and the Building Regulations 2006 provide the following requirements for owners:

- arrange for the design of building work and protection work;
- serve Protection Work Notices (Form 3) on affected adjoining owners and the RBS, together with the Protection Work Response Notice (Form 4) and all relevant information for the adjoining owner and the RBS to consider in relation to the proposed protection work;
- prior to commencement of the protection work:
 - provide a copy of the insurance cover to the adjoining owner;
 - provide a copy of the survey report of the adjoining property.

Note: Due to the complex nature of protection work and the requirements for the builder and any engineers involved in the process to have input into this process, an owner should consider appointing a suitably qualified person to provide specialist advice on the protection work provisions.

Section 84 – Notice of building work to be given

The Act states that an owner, who is required to carry out protection work, must notify the adjoining owner and the RBS of the proposed building work, including details of the proposed protection work.

Section 84(2) -

The Regulations prescribe forms for the Protection Work Notice (Form 3) provided by the owner to the adjoining owner and for the Protection Work Response Notice (Form 4) provided by the adjoining owner to the owner (refer regulation 602). An owner should ensure there is sufficient detail provided pursuant to regulation 602(3) (a) and (b) that will enable the adjoining owner to carry out a proper assessment of the proposal.

It is not sufficient to just state “to build wall on the boundary”. It is generally difficult to construct a wall on the property boundary without requiring access to the adjoining property for scaffolding, brickwork joint raking, or construction joint caulking or the like.

Therefore, in cases of this nature, the details should include location of the scaffolding, how it is to be erected, the length of time it is to be in place and what measures are in place to ensure no damage will occur to the adjoining property.

Section 85 – Adjoining owner must respond to notice

Following the serving of the notice, section 85 requires an adjoining owner to respond to the Protection Work Notice no later than 14 days after the notice has been served. The adjoining owner may agree to the proposed work, disagree, or require more information to be given. It is advisable that owners serve the form personally and obtain a signed receipt or post the documents via registered mail. This provides a definitive date to measure the commencement of the 14 day response period.

Section 236 - Serving of documents

Documents required to be served on or given to a person under the Act or the Regulations may be served on or given to the person by—

- delivering the document to the person; or
- leaving the document at the person's usual or last known place of residence or business with a person apparently not less than 16 years of age and apparently residing or employed at that place; or
- sending the document by post addressed to the person at the person's usual or last known place of residence or business or in any other prescribed manner.

Practice Note 20-2017

If the Form 3 is served on the owner of the adjoining property in person, it is not appropriate for the person serving the Form 3 to demand that the Form 4 be completed at that time. There have been instances where complaints have been lodged with the VBA that the adjoining owner has been directed to just sign the form without being given the opportunity to review the proposal.

It is recommended that a copy of this practice note be provided to the owner of the adjoining property to enable them to understand their rights and obligations.

Section 87 - Effect of disagreement or request for further information

Section 87(1) -

Where a notice under section 85(1) (b) (i) has been received, the RBS must make a determination as to the appropriateness of the protection work, but has discretion to ask for further information through inquiry under section 87(3).

Section 87(4) -

When satisfied the protection work is appropriate, the RBS must notify the owner and adjoining owner in writing. The RBS must include in the notification the prescribed period for appeal against the decision required by regulation 602 (14 days under regulation 1601).

Section 88 - Work not to be carried out until protection work requirements met

Section 88(1) -

It is an offence under section 88 of the Act for the owner to commence that part of the building work giving rise to the protection work, or the protection work itself until:

- Agreement has been reached (section 88 (1)(a)); or
- 14 days after the RBS has made a determination (section 88(1) (b) and section 146(1) (a)); or
- If an appeal is made, until such time as the BAB has made a determination (section 88(1) (c) and section 146(1) (b)).

Also, a valid building permit must be in place for building work to commence.

The onus is on the owner to comply, but the RBS has an enforcement role under Part 8 of the Act pursuant to sections 106, 111, 112 and 113.

Under section 146, protection work cannot be commenced if:

- In the case of a determination having been made by the RBS under section 87, until such time that the 14-day appeal period (regulation 1601) has lapsed; or
- In the case of an appeal being made within that period, until such time as the BAB has made a determination.

Section 88(2) -

The owner must carry out the protection work in accordance with:

- An agreement that has been reached with the adjoining owner as required by (section 88(2) (a)); or
- A determination made by the RBS (section 88(2) (b)); or
- A determination that has been made by the BAB (section 88(2) (c)).

Other responsibilities under the Act

The owner has other obligations and rights under the Act (see s93-101 below); however, the RBS is unable to act as an advocate for the owner or adjoining owner in the process. The RBS may be able to offer some guidance, but cannot act as the arbiter where differences of opinion occur between the owner and adjoining owner.

The appropriate body with jurisdiction to determine these matters is the Building Appeals Board (the BAB), through an application by the owner or the adjoining owner. Alternatively, the owner can seek his or her own legal advice.

This document can be provided to an owner and an adjoining owner by the RBS to ensure that all parties are aware of their rights and responsibilities.

Practice Note 20-2017

Section 93 - Owner to arrange insurance cover

The owner is required under this section to obtain an insurance policy before protection work begins.

The insurance policy must insure against—

- a) damage by the proposed building work to the adjoining property; and
- b) any liabilities likely to be incurred to adjoining occupiers and members of the public during the carrying out of the building work and for a period of 12 months after that building work is completed.

It is recommended that owners seek the advice of professional insurance brokers or agents to ensure the requirements of this section are met satisfactorily.

It can be difficult for an owner or owner builder to obtain this form of cover, but this is not sufficient reason to proceed without insurance. This insurance can often be obtained as an extension of the builder's public liability insurance, however the extension to the builder's insurance must ensure that it meets the requirements of the Act.

The owner must lodge a copy of the contract of insurance with the adjoining owner before the commencement of the protection work.

Providing a copy of the builder's public liability insurance is not sufficient. Non-compliance involves prosecution and a maximum of 500 penalty units for an individual, or 2,500 penalty units for a body corporate.

The owner must ensure that the contract of insurance is 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.

Section 94 - Survey of adjoining property

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. 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.

Section 95 - Entry on adjoining property

Once agreement has been reached on the proposed protection work, this section provides the owner with the ability to enter the adjoining owner's property to carry out a survey and the protection work itself, on the condition of giving the adjoining owner the required 24 hours notice or other time frame as agreed by the parties. The owner may only enter the adjoining property between the hours of 8am and 6pm.

Section 96 - Adjoining owner and adjoining occupier not to obstruct owner

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 for obstruction by the adjoining owner is a maximum of 10 units, plus 1 unit for every day of continued refusal of entry, obstruction or hindrance.

Section 97 - Expenses of Adjoining Owners

It is reasonable to expect that there will be legitimate expenses incurred by the adjoining owner as a result of assessing and supervision of protection work. This section details that the reasonable costs necessarily incurred by the adjoining owner must be paid by the owner. Reasonable cost may be determined by agreement or by the BAB.

Owners are liable to pay the cost in two respects.

One involves the expenses of assessing the proposed protection work, such as the design documentation. This may include necessary and reasonable costs associated with engaging structural engineers or other specialists to check design computations and other documents. The second relates to the actual supervision of protection work.

Practice Note 20-2017

If a dispute about the cost occurs, the owner or adjoining owner can refer the matter to the BAB.

If the BAB determines the matter and the owner fails to pay the costs, the adjoining owner can enforce the BAB's determination as though it were a judgement or an order of a court of competent jurisdiction.

Owners may consider seeking the adjoining owner's agreement in engaging a mutually acceptable and independent engineer (at the owner's expense), who can check the documentation and certify the adequacy of the protection work. This is not a legislative requirement, but is a reliable way of managing agreements relating to expenses.

Section 98 - Compensation

In addition to any reasonable expenses incurred by the adjoining owner, the owner is also responsible to pay compensation for any inconvenience, loss or damage, suffered by the adjoining owner or occupier.

Section 99 - Liability not affected

This section clearly leaves open any rights under civil law which enable the adjoining owner or occupier to take action against the owner, and/or the builder, in the event of causing injury to them.

Section 100 - Saving for easements

This section precludes the interference with light or party wall easements (unless with proper negotiation and the proper recording of this) and reinforces the civil law rights of an adjoining owner to protect their rights to any relevant easement.

Section 101 - Lodgement of plans after the completion of protection work.

The owner, within 2 months after completing the protection work, must serve on the adjoining owner and the RBS a complete set of plans, documents and specifications showing protection work as actually constructed.

It should be noted that a penalty of 50 penalty units applies if the owner fails to comply with this provision.

10. ADJOINING OWNER'S ROLE AND RESPONSIBILITIES

The Building Act 1993 and the Building Regulations 2006 provide the following requirements for adjoining owners.

Section 85 – Adjoining owner must respond to notice

Following the serving of a Protection Work Notice (Form 3), section 85 requires an adjoining owner to respond to the notice (Form 4) no later than 14 days after the notice has been served (see section 236 of the Act for serving of documents). The adjoining owner may agree to the proposed protection work, disagree with the proposed protection work, or require more information to be given to enable the proposal to be considered by the RBS. If the adjoining owner fails to respond within 14-days they are deemed to have agreed to the proposed protection work.

Section 92 – Adjoining owner may inspect plans

The adjoining owner has a right to inspect plans, drawings and specifications relating to the proposed building work free of charge. The RBS must make them available to the adjoining owner.

The adjoining owner must keep in mind that access to these plans is for the purpose of understanding what protection work is proposed. This process cannot be used for the purpose of commenting or objecting to matters such as design aspects, siting etc.

Other responsibilities under the Act

The RBS may be able to offer some guidance, but is not able to act as the arbiter where differences of opinion occur between the owner and adjoining owner. The appropriate body with initial jurisdiction to determine these matters is the Building Appeals Board (the BAB), through an application by the adjoining owners or the owner. Alternatively, the adjoining owner can seek independent legal advice.

Section 95 – Entry on adjoining property

This section provides the owner with the ability to enter the adjoining owner's property to carry out a survey and the protection work itself, on the

Practice Note 20-2017

condition of giving the adjoining owner the required 24 hours notice or other time frame as agreed by the parties. The owner can only enter the adjoining property between the hours of 8am and 6pm.

Section 96 – Adjoining owner and adjoining occupier not to obstruct owner

This section makes it an offence for the adjoining owner or occupier 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 adjoining owner may be prosecuted with a maximum penalty of 10 units, plus 1 unit for every day of continued refusal of entry, obstruction or hindrance.

Section 97 - Expenses of Adjoining Owners

It is reasonable to expect that there will be legitimate expenses incurred by the adjoining owner as a result of assessing the proposed protection work and supervision of the construction of the protection work. This section details that the necessary costs incurred by the adjoining owner must be paid by the owner.

Owners are liable to pay the cost in two respects.

The first involves the expenses of assessing the proposed protection work, such as the design documentation. This may include necessary and reasonable costs associated with engaging structural engineers or other specialists to check design computations and other documents. The second relates to the actual supervision of the carrying out of protection work.

These costs should be negotiated early in the process and agreed by both parties to avoid disputes.

If a dispute about the costs occurs, the adjoining owner or owner can refer the matter to the BAB pursuant to section 141 of the Act.

If the BAB determines the matter and the owner fails to pay the costs, the adjoining owner can enforce the BAB's determination as though it were a judgment or order of a court of competent

jurisdiction.

Owners may consider seeking the adjoining owner's agreement in engaging a mutually acceptable and independent engineer (at the owner's expense) who can check the documentation and certify the adequacy of the protection work. This is not a legislative requirement, but is a reliable way of managing agreements relating to expenses.

Section 98 - Compensation

In addition to any reasonable expenses incurred by the adjoining owner, the owner is also responsible to pay compensation for any inconvenience, loss or damage, suffered by the adjoining owner or occupier.

Section 99 - Liability not affected

This section clearly leaves open any rights under civil law that the adjoining owner or occupier has to take action against the owner, and/or the builder, in the event of causing injury to them.

Section 100 - Saving for easements

This section precludes the interference with light or party wall easements (unless with proper negotiation and the proper recording of this) and reinforces the civil law rights of an adjoining owner to protect their rights to any relevant easement.

Section 101 - Lodgement of plans after the completion of protection work.

The owner, within 2 months after completing the protection work, must serve on the adjoining owner and the RBS a complete set of plans, documents and specifications showing protection work as actually completed.

11. ADDITIONAL CONSIDERATIONS FOR OWNERS AND ADJOINING OWNERS

Communicate with the adjoining owner

As plans are developed for the building project, and especially if there is the prospect of having to provide protection work, an owner should consider engaging the adjoining owner in the process, so that they have an understanding of what may take place. Adjoining owners often contact council or other authorities when they are unsure of their neighbour's building work intentions. This may result in a stop work order or

Practice Note 20-2017

an emergency order being issued and get the parties off on the wrong foot.

Communicate with the building surveyor

Difficulties often arise when an owner does not provide sufficient information to the RBS to ascertain that protection work is required. The adjoining owner may telephone the various authorities, which may result in the serving of a building order to stop work, or even an emergency order, on the owner.

This may happen even if a builder has been engaged to carry out the building work. Owners may suddenly be involved in delays and potential litigation, the cost of which may outweigh the cost of implementing protection work measures in the first place. It is important that the owner communicate with their builder and the RBS to avoid this possibility.

Communicate with the builder

It has been reasonably common, under a standard building contract, that the owner appoints a builder to act as their agent for obtaining the building permit. However, from 1 September 2016 the builder cannot appoint the private building surveyor to issue a building permit and undertake the mandatory inspections. The Act now requires the owner to appoint the private building surveyor. This means that the owner should be directly involved in discussions with the RBS and the adjoining owner when the RBS requires protection work.

The owner should communicate with the builder, asking questions about any process that the owner does not understand, and if protection work is required, the owner should get the builder to do more than just post the necessary protection work notices to the adjoining owner through the mail. If the builder is unwilling to spend a little extra time in dealing with the adjoining owner, the owners should consider dealing with the adjoining owner directly.

If disputes arise due to lack of communication, it is the owner that will suffer through additional delays and costs. Most contracts have a clause

allowing variation to the contract price if a regulatory authority requires additional work to that which has been quoted.

If damage to the adjoining property does occur

If damage occurs to an adjoining property due to failure of the protection work, it is the responsibility of the owner to reinstate the adjoining property to the condition it was in before the damage occurred. The owner should also speak to the insurance provider.

If a dispute arises between the owner and adjoining owner, about the nature of the damage and cause of damage, then the matter should be referred to the BAB, or to the insurance provider.

It may also be appropriate that the owner and adjoining owner seek advice from their own legal professional.

Emergency procedures, and absent or incapable owners

Sections 89, 90 and 91 of the Act deal with the provision of emergency protection work and incapable or absent owners. Where these problems arise, owners or adjoining owners should contact the Technical and Regulation Unit at the Victorian Building Authority for information on the application of these provisions.

12. DISPUTES

The Act provides for a dispute resolution service through the BAB. The owner and the adjoining owner have the right to refer any matter that is relevant to the protection work to the BAB.

The RBS may offer some guidance as to what the legislation requires but is not able to act as the arbiter where differences of opinion occur between the owner and adjoining owner. The appropriate body with initial jurisdiction to determine these matters is the BAB.

Alternatively, the owner or the adjoining owner can seek his or her own legal advice.

Section 151 - Emergency protection work

If an owner or adjoining owner cannot agree about how or when emergency protection work required by declaration by the VBA under section 89(1) is to be carried out, then either of them may

Practice Note 20-2017

refer the matter to the BAB.

Section 152 - Insurance

If an owner or adjoining owner cannot agree about the nature or value of insurance cover required under section 93, then either of them may refer the matter to the BAB.

Section 153 Surveys of adjoining property

If the owner and an adjoining owner cannot agree about how or when the survey is to be carried out or the adequacy of the survey, then either of them may refer the matter to the BAB.

Section 154 - Cost of supervising protection work

If an owner or adjoining owner cannot agree on the adjoining owner's costs and expenses incurred in supervising the protection work, then either of them may refer the matter to the BAB.

Section 155 Other disputes between owners and adjoining owners

If there is any other matter regarding protection work that the owner and adjoining owner cannot agree on and it cannot be dealt with under any other provisions within the Act, then either of them may refer the matter to the BAB.

13. BUILDERS ROLE AND RESPONSIBILITIES

13.1 Background

The Builder can play a positive role in assisting all parties to reach a successful outcome when protection work is required, but to achieve this requires an understanding of individual roles and their responsibilities. It is not, however, the role of the builder to determine if protection work is required. This is the responsibility of the RBS.

This Practice Note provides general information about the protection work process, but is not a guide for dealing with disputes that happen between the owner and the adjoining owner — the appropriate forum for that is the BAB.

The provisions relating to the protection of adjoining property are set out under the Act and the Regulations. Protection work is only required when determined to be necessary by the RBS under the Act and Regulations.

13.2 What should the builder do where protection work is required?

The builder should ensure that the owner and adjoining owner have complied with the protection work process. That is, that the appropriate protection work notices have been completed and the RBS has determined the appropriateness of the protection work if necessary.

The builder should be involved in the project as early as possible, to ensure that the design of the protection work is appropriate to limit the potential for problems further down the track when construction begins.

The protection work process may place specific requirements on the builder regarding how the building and protection work is carried out. The builder must ensure they are able to carry out protection work required or inform others of their proposed method of construction to protect the adjoining property.

The builder must construct the building work and protection works in accordance with the approved design and building permit documents. Any changes to the design must be documented and submitted to the RBS for assessment and approved before the work is undertaken.

The builder must also ensure that prior to commencement of the protection work that has been approved as part of the building permit, that the survey of the adjoining properties pursuant to section 94 of the Act and insurance cover pursuant to section 93 of the Act are completed and in place. It would be unprofessional for a builder to commence the protection work without ensuring these additional measures have been complied with first.

PART C: Protection work: Some common questions and answers

Whether you're a big building company, small time builder, or an owner-builder, many building projects require measures to protect adjoining owner's property from damage or inconvenience during the building process.

Sometimes it will be obvious when building work will impact on the adjoining owner's property, and other times it may not be apparent until adjoining owner's complain about the impacts to their property or amenity.

Answers to these common questions aim to provide designers, building surveyors, builders and consumers simple advice when designing, approving and undertaking protection work.

What should I consider in relation to excavations?

Excavations provide additional difficulties for designers, builders and building surveyors and may present serious impacts on adjoining properties in the event something goes wrong.

When designing protection work for deep excavations or other excavations that will affect the adjoining property, consideration must be given to:

- depth of the excavation in relation to its offset from the adjoining properties, including the additional room for tanking and drainage;
- soil characteristics and water table;
- protection work method (i.e. vertical cuts as opposed to bored piers);
- trades available to complete the work;
- special machinery required to perform the work (i.e. drilling rigs, back-hoes, etc);
- special materials needed (i.e. concrete panels, anchor rods, etc);
- practicality of the construction methods required to carry out the proposed schedule of works, to ensure trades working under deep excavations are performed safely
- Weather events such as flash-floods, storms, prolonged wet periods, etc.
- Over-excavation necessary to complete

work such as construction, tanking, drainage, etc.

What happens if my neighbour's building is attached illegally to my building, and I am planning to remove/modify this part of the building? Is protection work necessary?

Yes, protection work is necessary and you need to serve the Form 3 on your adjoining owner.

The adjoining owner in this instance would have to make arrangements to modify their building to be constructed totally within their own allotment boundaries in accordance with a building permit, and it may take some time for the adjoining owner to make the necessary arrangements; so early discussion is essential.

Does work to a party wall trigger protection work?

Where the proposed building work involves changes to the structural stability, fire rating, or weatherproofing of the wall, protection work would typically be required. Where work is only for painting and rendering, there is little chance protection work would be necessary, but the RBS may determine otherwise when assessing the building permit application.

Does underpinning of an adjoining building trigger protection work?

Yes, in all cases; and contrary to some opinions, dual certification pursuant to regulation 603 cannot be used in place of the protection work notice process.

Is Engineers' dual certification under regulation 603 an alternative approach to a Protection Work Notice (Form 3) being served on adjoining owners?

There are various examples where Engineers' dual certification under reg 603 has been inappropriately and incorrectly accepted by the RBS as an alternative approach to serving a Protection Work Notice (Forms 3); particularly in instances where adjoining owners disputes exist by owners and builders attempting to adopt a convenient way to avoid dealing with these adjoining owners.

Practice Note 20-2017

Dual certification is not an alternative approach to serving a Protection Work Notice (Forms 3) on an affected adjoining owner, despite its misuse for that purpose in the past.

Protection work should not be confused with building work. Regulation 603 provides an exception to a requirement for protection work which can be used only where the building work will not adversely affect the stability of, or cause damage to, the adjoining property, and the building work is not proposed to be carried out over, on, under, or in the air space of the adjoining property. Dual certification under section 238 of the Act can then be accepted by the RBS in accordance with regulation 603.

What needs to be included in a Protection Work Notice (Form 3)?

To ensure the affected adjoining owner has all the information necessary to make an informed decision on the proposed protection work, the Form 3 needs to include the following:

- Details of the proposed building work
- Details of the proposed protection work setting out the nature, location, time and duration of the protection work.

It may be appropriate for a work method statement to be prepared which gives a clear description of what the protection work is, when it will occur, and how long it will take during the building project.

What other information must accompany the Protection Work Notice (Forms 3)?

A common mistake is that a Protection Work Notice (Forms 3) is served without all the necessary documentation for the adjoining owner to make an informed decision.

The prescribed information which must be given is the nature, location, time and duration of protection work. Important information should also include (but not be limited to):

- A copy of the Protection Work Response Notice (Form 4),
- Architectural plans highlighting the areas that represent the areas of concern,

including the adjoining property details, the location of the adjoining owners buildings or property likely to be affected.

- Engineer's design that addresses the method of protection of the adjoining properties, including the engineer's Certificate of Compliance – Design.
- Critical time frames including commencement, completion, when access to adjoining properties will be required, and program of work.

Can the RBS prepare and issue a Protection Work Notice (Forms 3)?

The RBS is not permitted to prepare and/or issue the Protection Work Notice (Form 3). The role of the RBS is to determine whether protection work is required in the first instance, and once a Form 3 has been served and responded to, must then determine whether the proposed protection work is adequate or inadequate; for that reason the RBS must be totally separate and independent from the design process of the protection work.

In instances where an owner or their agent is not capable of preparing a protection work notice, they may engage an appropriate professional to assist in the process of preparing and serving the documentation to ensure there is adequate information to enable the adjoining owners to make an informed assessment of the proposed protection work. However, the owner of the property where building work is proposed is ultimately responsible for the serving of the Protection Work Notice (Form 3), together with all other relevant documentation. Who does a Protection Work Notice (Form 3) get served on?

The Protection Work Notice (Form 3) must be served on the RBS and affected adjoining property owners. Evidence of service by registered mail may be necessary, specifically in the event the adjoining owner does not respond.

What happens after a Protection Work Notice (Form 3) is served?

An adjoining owner may respond via the Protection Work Response Notice (Form 4) by

Practice Note 20-2017

agreeing, disagreeing or requesting further information.

If the adjoining owner does not respond within 14 days of service, then this is deemed as consenting to the proposed protection work; however, evidence will need to be provided to the RBS to demonstrate that the affected adjoining owner has received the protection work notice (Form 3) and other associated documentation, and when the affected adjoining owner received them.

The RBS must consider the response of the adjoining owner and determine whether the proposed protection work is adequate.

Absent or incapable owners, or deemed agreement to Form 3

Where adjoining owner's fail to respond to the Protection Work Notice (Form 3), or where the adjoining owner is overseas, uncontactable or incapable, the RBS must be satisfied that the Protection Work Notice (Form 3) and all relevant documentation was served correctly (see Section 236 of the Act).

Absent or incapable owners present additional difficulties and require additional consideration in order to ensure a suitable person can act as an agent of the adjoining owner (see Section 90 & 91 of the Act).

Where these problems arise, owners or adjoining owners should contact the Victorian Building Authority for information on how to resolve this problem.

I'm a building surveyor and at the point where I must make a determination on the protection work pursuant to Section 87, and an engineer's design on the protection work has been prepared; do I have to accept the engineer's design?

Prior to making a determination on the proposed protection work, you are required to assess all the information that was served on you as part of the Forms 3 and 4 process, which may include a structural design and a Certificate of Compliance – Design.

If you are not satisfied that the engineer's design

is appropriate, and taking into consideration the adjoining owners response, you may determine that the proposed protection work is inadequate, even in instances where this engineer's design has been independently certified.

I'm a building surveyor and the adjoining owner's have signed the Form 4 agreeing to the proposed protection work, but I'm not convinced the protection work proposed is adequate. Should I issue the building permit?

The role of the RBS is to ensure all work, including protection work, meets the requirements of the Act and Regulations.

If you are uncomfortable with or believe the proposed protection work is inadequate, you must refuse to issue the building permit. You should advise the owner to re-commence the Protection Work Notice (Form 3) process, properly detailing the proposed protection work to be undertaken. It would be appropriate in this instance to explain your concerns with the owner, and try to gain a better understanding on how they intend to approach the protection work.

I'm a building surveyor, and the Protection Work Notice (Form 3) has been served by the designer or owner, and the builder has not yet been appointed. Am I safe to assume the builder will follow the protection work program as described in the Form 3 and other supporting documentation when I issue the building permit?

The building permit plans should include the detailed protection work program of works that the appointed builder can follow, however, for more complex matters, it may be beneficial to have a meeting with the builder prior to issuing the building permit and releasing the endorsed documentation to confirm with the builder the methodology to be adopted in the construction process.

Is insurance required?

Where protection work is required, insurance is mandatory and must cover all affected adjoining owners properties. This insurance must be obtained prior to commencement of the protection work and copies of the insurance policy

Practice Note 20-2017

for an amount agreed to by both parties must be given to the affected adjoining owner prior to the protection work commencing.

I am a registered builder and have an annual Construction & Liability Insurance Policy (also known as Contract Works Insurance); am I covered for protection work

No; this standard insurance policy does not normally cover protection work. You will need to specifically request protection work insurance from your insurance provider to cover the specific affected adjoining properties. Your insurer may request additional documents to assess the application for the insurance to determine if they will accept the risk.

Contrary to some people's understanding, a site specific insurance policy is not issued for protection work for the affected adjoining properties.

Insurance cover for protection work is an extension of the Construction & Liability Insurance Policy and does not specifically identify the affected adjoining properties on the policy. For further clarification on insurance cover for protection work speak with your insurance provider.

I am an owner-builder; am I required to have insurance for protection work?

Yes; owner-builders have the same obligation as registered builders to be covered by the appropriate insurance cover. Owner-builders should ensure they have their Construction & Liability Insurance Policy in place prior to the commencement of work, and ensure the insurance policy includes protection work cover for adjoining properties.

Is an existing condition report required?

Where protection work is required, an existing condition report is mandatory and must fully document the existing conditions of the adjoining properties. The survey must be carried out by the owner or the owner's agent, in the company of the adjoining owner or the adjoining owner's agent.

Copies of the existing conditions report must be

provided to the affected adjoining owner and both parties are required to sign or otherwise acknowledge the report, clarifying that all parties agree on the existing conditions of the adjoining property prior to the protection work commencing. This is often forgotten, but is very important for everyone concerned, if at the end of the project there is a dispute about damage caused as a result of the protection work undertaken.

Can the adjoining owner refuse the builder access to do protection work?

It is an offence for the adjoining owner or adjoining occupier to obstruct the owner or owner's agent.

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.

Can I start building work before the protection work is completed?

Where protection work is required the building work associated with the protection work cannot be started until the protection work has been completed. This does not stop other building work being started on the site if protection work is not needed directly for that building work. It is important to ensure the building permit has been issued and the site sign has been displayed prior to any building or protection work commencing on the site.

What if I do building work, and I think the adjoining property requires protection?

Stop work on that part of the building and contact the RBS to request an inspection. The RBS will then determine the course of action and whether protection work is required.

The protection work process can commence after a building permit has been issued if circumstances change from those proposed in the initial application for a building permit.

Practice Note 20-2017

When the building work and protection work is located on the title boundary, as the builder can I remove the boundary fence as part of the protection work?

No, the boundary fence separating the two properties must remain in place. The removal of a boundary fence can only be undertaken when both property owners agree to the removal of the fence. For further information relating to the rights and responsibilities relating to boundary fencing go to fencing online <http://www.fencingonline.com.au/>

What happens if the protection work is not carried out in accordance with the protection work design?

Where it is identified that the work is departing from the protection work design in accordance with the building permit, the relevant building surveyor may have to issue a building order to stop work. This may also require the builder to recommence the protection work notice process by serving a new Form 3 with all prescribed details and accompanying documents and information, to ensure all affected adjoining owners are updated on the changed protection work methodology and construction techniques. This change in process can delay the project for more than 14 days (especially if there are appeals to the Building Appeals Board).

What role does the Building Appeals Board (BAB) have with regard to protection work?

The BAB is the independent statutory body that hears appeals and disputes in relation to a variety of building related matters, including appeals/disputes regarding protection work.

In regard to protection work, the BAB may hear appeals/disputes regarding:

- A determination by the RBS under section 87 as to the appropriateness of the protection work.
- A failure of the RBS to make a determination on the proposed protection work.
- A request by the RBS after receiving the Protection Work Response Notice (Form 4) that additional information be provided

before making a determination on the proposed protection work.

- Other matters including emergency protection work, insurance, surveys of adjoining property, cost of supervising protection work and other disputes between owners and adjoining owner.

Want to know more?

If you have a technical enquiry, please email technicalenquiry@vba.vic.gov.au or call 1300 815 127.

Victorian Building Authority
733 Bourke Street Docklands VIC 3008

Practice Note 20-2017

Protection of Adjoining Property process flowchart

