

Building Permits

Q&A

The following answers have been provided to questions asked during the Building Permits webinar on 4 May 2023.

The answers provided are correct as at 18 May 2023.

Will the VBA provide a copy of the presentation slides?

A copy of the presentation slides and recording of the webinar is available from the VBA website: <https://www.vba.vic.gov.au/plumbing/PES-previous-sessions>

What is the definition of “Significant Damage”?

The term Significant Damage is not defined in the Act. The Relevant Building Surveyor (RBS), when considering this, must have regard to potential soil subsidence beneath/ on the adjoining land, and subsequent potential damage.

The notice stats "owner" of adjacent property. How will this work in commercial settings where the land is occupied by the business, and they are the entity that is affected? Do we still need to get a response from the owner, and then have to manage the commercial tenant separately?

That is correct. It is to the adjoining owner and if there happens to be a tenant, the adjoining owner should consult with the tenant.

I take it that if the risk of damage to adjoining properties is only below the level of "significant", then the adjoining owner is completely out of luck?

Essentially yes, if the RBS does not require protection work, the adjoining owner can make a complaint to the VBA arguing the RBS should have required protection work.

So, the RBS is not responsible if common boundary fencing is removed?

The RBS is not responsible for the removal and replacement of common/boundary fences, this is not Protection Work and these matters are subject to the *Fences Act 1968*. The process for owners and the forms that need to be completed is set out under the *Fences Act* which is administered by the Department of Justice and Community Safety.



Many jobs now include the use of an onsite crane that may have its arm extend over adjacent properties placing a property at risk due to a hitching failure or the crane itself. No physical protection is required but we occasionally see a crane collapse with substantial damage as a result. How is this protected against?

When there is a risk, the RBS may determine that precautions under *Regulation 116* are required in these instances, this could include precautions such as exclusion zones, hoarding, additional fencing, safety webbing and the like.

I am familiar with the Protection Works notices associated with Building Construction such as basements and walls etc. Can you elaborate on Protection works and Notices required for installation of Utilities, e.g., Sewer or Water connections outside of the property but associated with the works, this could be public land or a roadway.

Installation of utilities does not require a building permit as it is exempt under *schedule 3* of the *Building Regulations*, therefore the protection works process is not triggered nor is it required under the *Building Act*.

If hoardings are supplied for public protection (R116) but also inadvertently protect the council assets (protection works) (let us use the construction of a high-rise building as an example) does the VBA feel that both a R116 consent and Protection Works Notices (PWN) process need to be followed and issued to council? Current industry practice is PWN for below ground near street alignment boundary and R116 for above ground near street alignment boundary. Is this process in line with VBA's opinion?

It depends on the council and its local bylaws, and the protection required. This matter would need to be determined on a case-by case basis and the VBA recommends that the RBS contacts the council to confirm the exact requirements when determining the matter.

What does the PW (Protection Work) insurance cover? And is it mandatory for all PW applications.

Yes, it is mandatory for PW and must cover damage and any liabilities likely to be incurred by the adjoining owner and or members of the public. Please refer to the specific insurer and *Section 93 of the Building Act*, available using this link: <https://www.legislation.vic.gov.au/in-force/acts/building-act-1993/136>

Should the potential for soil collapse during the digging of a swimming pool be considered when issuing PWN? If there is no adjoining structure within the AOR, trees, or landscaping other than grass, is PWN still required? Is soil collapse considered significant damage given that boundary fences are a civil issue and not covered by PW?

It is up to the relevant building surveyor to make the determination whether any precautions need to take place before building work is to take place.

What if the neighbour does not grant consent to "Right of entry". Is there another remedy?

Yes, an application can be made to the Building Appeals Board if the parties cannot agree on how or when to carry out the survey report.

Depending on how the advice is served what grace period is added to the formal period requiring a response?

There is no grace period defined in the *Building Act*. However, if served by post, the industry practice could be to add an additional time period based on Australia Post, but this is not mandatory.

**Is it considered a conflict of interest to assess a PWN application before it is served on the adjacent owners?**

It is not a conflict of interest. However, the RBS must not fill in the form or complete it for the owner. If the owner has questions before they serve the documents, the RBS can assist in answering those. The RBS should not review the PN until it lands on their desk which should only be after the adjoining owner responds or time to respond has lapsed, this is based on the Building Surveyor's Code of Conduct advice.

RBS needs to make the determination on the Protection Work themselves as to whether it is appropriate, regardless of whether the adjoining owner agrees or disagrees to the work.

Does the applicant need to wait for the RBS to issue a Form 9 (assuming RBS determines not appropriate) before re-serving, or is there provision to amend the original documentation?

Pursuant to *section 87(2) of the Building Act 1993*, the RBS may ask the owner to provide more information to the adjoining owner before making form 9 determination.

How/ Who is responsible for determining the value of the adjoining structures for PWN insurance cover?

The amount to be covered under the insurance is to be agreed between the owner and adjoining owner. If they cannot agree, either party may apply to the Building Appeals Board to determine.

If a PWN is complete and agreed upon, but the owner does not obtain insurance, then where would the adjacent owner go for help? Building Appeals Board (BAB) application?

Yes, if any disputes arise, the Act provides the option for either of the parties (owner or adjoining owner) to go to the BAB over insurance matter. Please note that no protection works should commence unless insurance is in place for that protection work.

Pretty sure answer to “Q 3: True or False: Unless a local law requires precautions, the report and consent of the relevant council is not required for precautions over the street alignment” is false not true.

Answer has been corrected. Please refer to the published [presentation slides](#) on our website.

Are tiny homes a classifiable building (Class 1)? And if so, subject to the mandatory inspection requirements

It is up to the Relevant Building Surveyor to make the determination on what class a building is for when a building permit is required. If it is related to the construction of a Class 1 building, yes mandatory inspections are required under the *Building Act*.

What is the process to follow if you have found that an alteration to a building has been done without RBS notification or inspection, and these works now needs to be rectified?

Where any work has not been carried out in accordance with the Act or it is unsure that building work has not been carried out correctly, it is best to notify the Relevant Building Surveyor.

If there is to building works on the boundary, and the neighbouring property is 2m from the boundary is a PWN required? Note, the neighbour will not allow access therefore building of the garage will be undertaken avoiding access to neighbouring property.

Whether Protection Work is required is to be determined by the Relevant Building Surveyor. Distance from the boundary is a consideration however a certain distance does not automatically mean protection work is not required.



As per Regulation 111 the RBS is responsible to determine whether protection works are required. If PW have not been deemed required for works that have caused no ‘significant damage’ to the adjoin property, then who has the right to complain or challenge the call of the RBS? Reg 111 gives the RBS & the RBS alone the power to determine the need for protection works, therefore pursuant to the RBS’ obligations under this Reg the RBS is the only person to determine PWN based on these reasons.

A complaint can be made to the VBA for the VBA to investigate if protection work should have been required by the RBS.

Can someone that has an IN-P carry out the final inspection of pool barrier?

No, a Building Inspector (Pool Safety) is not authorised to carry out mandatory inspections of a building permit.

Can a builder request the inspection report from the RBS?

A copy of the record of inspection can be requested by anyone listed under *section 35A of the Act*. The builder is not listed however the builder may be able to request it if they have authority from the owner.

If reliance on Reg 126 Construction is not applicable to commercial construction, what are the requirements for Commercial Construction?

The normal mandatory inspection requirements including record of inspections or any required inspections as determined by the Relevant Building Surveyor is still required for checking compliance of the building work. It is just that the Relevant Building Surveyor cannot rely on a certificate of compliance for immunity for non-domestic mandatory inspections.

After RBS receives Form 8, does the applicant need to wait for the RBS to issue a Form 9 (assuming RBS determines not appropriate) before re-serving, or is there provision to amend the original documentation?

The *Building Act 1993* does not provide any restrictions against the owner issuing a new Form 8 notice for protection work if required, but if this happens the whole protection works process will have to start again in connection with that latest notice for each party to correctly carry out their function as required. This includes the Relevant Building Surveyor's role in deciding on the latest proposed protection works. The owner would be recommended to consult with the Relevant Building Surveyor before issuing a new Form 8 Notice.

If a registered engineer is caused by the RBS to undertake an inspection, can you decline/refuse to undertake the inspection?

Any endorsed engineer has the right to not take on work including inspections. If an endorsed engineer has however agreed under any contractual agreements to carry out inspections as part of that contract, they may be in breach of that contract by refusing the inspection.

If either engineer or RBS needs further work for inspection to comply. Can they rely on photos especially if minor in nature?

If it is considered to be part of a building mandatory inspection, all inspections and gathered evidence/records as part of that inspection must be carried out in person.



Can a building surveyor issue a building permit without a *Reg126* letter from building services registered engineers? Is there a list of documents/clauses which are mandatory to include in *Reg126* letters or is that up to the discretion of the building surveyor?

Yes, a *Regulation 126* certificate of compliance is not mandatory under the legislation however it may be requested by the Relevant Building Surveyor. Any documents to be certified as part of the certificate of compliance is up to the relevant building surveyor to determine.

Can an adjoining owner be compensated for the cost of their agent attending a survey of their property prior protection works?

Section 97 of the Building Act 1993 is related to costs and expenses incurred by the adjoining owner in assessing proposed protection work and in supervising the carrying out of the protection work. Any costs must be related to assessing protection works and supervising the carry out of the protection works. If any dispute or no agreement is reached over those costs, either of the owners can go to the Building Appeals Board for the costs to be determined by the Board.

Can a builder hire his own preferred RBS for a domestic project?

The builder is not allowed to appoint the Relevant Building Surveyor pursuant to *section 78(1A) of the Building Act 1993*. The choice of Relevant Building Surveyor is up to the owner.

What is the appropriate pathway in the case where an inspection was not undertaken of an already constructed slab/footing? Is there an appropriate pathway for a *Reg126* inspection certificate to be issued by an engineer from assessment of the slab (e.g., scanning, photos) given that the pre pour condition should have been inspected and that photos should not be solely relied upon.

The Building Act 1993 and Building Regulations 2018 requires the mandatory inspections to be listed and to be carried out after the builder has notified the Relevant Building Surveyor of the completion of that stage of the building work. Further the Relevant Building Surveyor also has the power under *Section 35 of the Act* to carry out any other inspections where appropriate. Where work has already commenced without notifying the Relevant Building Surveyor, this is considered a breach of the legislation and further the Relevant Building Surveyor could also ask for the work to be demolished, opened, or cut in to, tested etc., if required to be satisfied that the work complies. All building mandatory inspections are required to also be carried out in person and the certificate of compliance for the building work should only be issued when the inspector can be satisfied the building work complies even if work was required to be opened or cut in to for demonstrating compliance. Photos from other parties not taken by the inspector in person, should not be relied on.

Is there a professional who can help the owner to understand all these permit requirements other than an RBS?

The VBA's website does offer building resources with respect to different topics in relation to building legislation that may also assist, other professionals like municipal building surveyors from the relevant council can be another useful asset for more site-specific advice. There can also be consultant private building surveyors who are not appointed that may be of assistance as well too.

When is a building permit (and occupancy permit) required to rely on mechanical services *Reg126* letters?

Building work compliance and the design of the building work for the purpose of issuing a building permit is up to the relevant building surveyor. There is no requirement to rely on a certificate of compliance this is just one method that the relevant building surveyor may choose to use in good faith. The Relevant Building Surveyor also may have the option of accepting a draftsman to carry out the design of mechanical services too.