

Form 3
Building Act 1993
BUILDING REGULATIONS 2006
Regulations 602(2) & 602(3)

Protection Works Notice

To

1. **Adjoining owner**

Postal AddressPostcode.....

2. **Relevant building surveyor:** TJ Building Consultants
45 Desmond Road, Wattle Bank
P.O Box 128, INVERLOCH VIC 3996
Ph: (03) 5657 4408 Fax: (03) 8678 1324 Mobile: 0408 142 061
Email: info@tjbc.com.au
Contact person: Tim Blankenstein

From

Owner/agent

Postal address Post code

Contact person Telephone

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

Details of proposed building work

Property details

NumberStreet/road City/suburb/town

Lot/s LP/PS Volume Folio

Crown allotment Section Parish County

Municipal District

Adjoining property details

NumberStreet/road City/suburb/town

Lot/s LP/PS Volume Folio

Crown allotment Section Parish County

Municipal District

Protection work and program

Nature, location, time and duration of protection works:

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

Form 4
Building Act 1993
BUILDING REGULATIONS 2006
Regulations 602(4) & 602(5)

Protection Works Response Notice

To

1. **Owner or agent**

Postal address Post code

2. **Relevant building surveyor:** TJ Building Consultants
45 Desmond Road, Wattle Bank
P.O Box 128, INVERLOCH VIC 3996
Ph: (03) 5657 4408 Fax: (03) 8678 1324 Mobile: 0408 142 061
Email: info@tjbc.com.au
Contact person: Tim Blankenstein

From

Adjoining owner

Postal address Post code

Contact person Telephone

Address of property where building work is to be carried out (from Form 3)

Property details

Number Street/road City/suburb/town

Address of my adjoining property

Number Street/road City/suburb/town

Response

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

(a) agree to the proposed protection work []

(b) disagree with the proposed protection work for the following reasons []

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

(c) request the following further information []

.....
.....

Signature

Name of owner or agent:.....

Signature of adjoining owner or agent: Date/...../.....

Note: This notice under section 85 of the **Building Act 1993** must be given to the owner or agent within 14 days of being served with a notice under section 84 of that Act and in the case of (b) or (c) must also be given to the **relevant building surveyor** who must determine the matter under section 87 of the **Building Act 1993**.

PROTECTION WORKS MEASURES

(Further Information to Accompany Form 3 'Protection Works Notice')

Site Address: _____

Adjoining Property: _____

1. Protection Works Insurance

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

2. Adjoining Property Survey

The owner shall in conjunction with the adjoining owner (or his/her representative) undertake a survey of the adjoining property and record in writing and by any other means (i.e. photographs) any existing cracks or other defects in the adjoining property.

The survey shall be kept as evidence of the condition of the adjoining property prior to the commencement of works.

3. Hours of access

The owner or agent of the owner in accordance with Section 95 of the *Building Act 1993*, may enter the adjoining property between the hours of 8am to 6pm with 24 hours notice provided except where agreed otherwise for the purpose of carrying out protection works as agreed.

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

4. Method of Protection (Tick if applicable)

Construction of Footings on or Near Boundary

The builder will excavate the new footings with care and diligence to ensure that there is no adverse impact on the adjoining structure. The excavation shall be properly guarded in accordance with part 604 of the Building Regulations 2006 (protection to public).

The builder shall arrange for the excavation of the footing, placement of the reinforcement, mandatory notification stage inspection and pouring of the footing as soon as practicable and in a continuous work schedule.

Should any damage be agreed to have occurred in the adjoining property that can be attributed to the damaged area shall be reinstated to the satisfaction of the adjoining owner and the builder. The proposed footings shall under no circumstances undermine the adjoining existing footings.

□ **Construction of Walls on or Near Boundaries**

Construction above ground level shall be undertaken from scaffolding or the like which will have adequate measures to safe guard debris and building materials from falling off.

The adjoining property in the immediate vicinity of the proposed boundary works (i.e. 1m beyond the works) shall be hoarded off to protect adjoining occupants against injury.

The builder shall ensure that any building material that falls onto the adjoining property will be retrieved and the area cleaned to the original condition. Any damage that is agreed and deemed to have occurred as a result of the works will be repaired / reinstated to the satisfaction of the adjoining owner.

□ **Construction of Boundary Walls Above the Height of Existing Adjoining Roofs**

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

The builder shall ensure that the roof surface and surrounding areas will be cleaned to the original condition and any damage that is agreed and deemed to have occurred as a result of the works will be repaired / reinstated to the satisfaction of the adjoining owner.

□ **Boundary Fences**

Prior to the removal of any boundary fences the builder shall arrange for the temporary relocation of vine type vegetation belonging to the adjoining property. The builder shall execute the works to avoid any damage to adjoining garden beds and/or paved areas.

The boundary fence shall be replaced with a temporary 1.8m high chain wire mesh or solid plywood hoarding at a location agreed to with the adjoining owner during the duration of the works and until completion of the boundary wall or new fence.

□ **Underpinning Works**

The underpinning works including the sequence, procedure and nature of the works shall be carried out strictly in accordance with the certified engineers design documentation to form part of the approved building permit documents (refer attached).

The builder shall ensure that the excavations are dug and poured on the same day and the underpinning pads are of the dimensions, width, depth etc stipulated by the structural engineer. All underpinning pads shall be inspected and approved by the structural engineer as well as TJ Building Consultants prior to pouring.

The above protection measures are proposed to meet the requirements of the Building Act 1993 and subject to the approval of TJ Building Consultants.

Signature of Owner / Builder

Signature of Adjoining Owner (or representative)

Name: _____

Name: _____

Signature: _____

Signature: _____

Serving Procedure:

Serve the package along with three copies of a blank Form 4 to each adjoining owner. (Three copies so that one copy kept by adjoining owner, one copy returned by you, and one copy returned to Building Surveyor.)

Send a duplicate of the entire package to the Building Surveyor. (Include proof of service such as registered postal receipts or by completing a Statutory Declaration as evidence that the documents have been served and on what date.)

The documents can be served by any of the following methods

- 1. Delivering the document to the person;*
- 2. Leaving the documents at the person's usually or last know place of residence of business with a personal apparently not less than 16 years of age and apparently residing or employed at that place;*
- 3. Sending the documents by post addressed to the person at the person's usual or last know place of residence or business. It is suggest that register mail be used so proof of deliver can be obtained.*

What you need to know about

Protection of adjoining property



Why protect adjoining property?

Building work can sometimes adversely affect adjoining properties. An owner who is proposing building work has obligations under the Building Act 1993 (the Act) to protect adjoining property from potential damage from their work.

If building work is close to or adjacent to adjoining property boundaries, then an owner may be required to carry out protection work in respect of that adjoining property. This is to ensure that the adjoining property is not affected or damaged by the proposed building work.

The Act defines adjoining property as:

Adjoining property means 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 occur as to be at risk of significant damage from the building work.

What is protection Work?

Protection work provides protection to adjoining property from damage due to building work. It includes but is not limited to:

- Underpinning of adjoining property footings, 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.
- Overhead protection for adjoining property.
- Other work designed to maintain the stability of adjoining property from damage from building work.

Under the *Building Act 1993* the responsibility for determining whether protection work is required rests with the relevant building surveyor.

How do you know if protection work is required?

When making an application for a building permit for the proposed building work, the applicant (the building owner or agent of owner) is required to provide detailed information about the building work to the relevant building surveyor. The relevant building surveyor will then determine if protection work is required.

What obligations does a property owner have if protection work is required?

Serve Protection Work Notice on adjoining owner

Owners who are required to carry out protection work in respect of an adjoining property must serve a notice on the adjoining owner and provide details about the proposed protection work. Building work must not be undertaken until the adjoining owner agrees to the protection work or the relevant building surveyor has made a determination on the protection work.

- The adjoining owner must respond to the notice no later than 14 days after the notice has been served. They can agree or disagree to the proposed protection work or require further information to be provided.
- An adjoining owner who fails to respond to the notice within the required time is deemed to have agreed to the proposed protection work.
- If the adjoining owner agrees or is deemed to have agreed to the proposed protection work, the owner may proceed to carry out the protection work after obtaining any necessary permits or approvals.
- In the event where the adjoining owner disagrees with the proposed protection work or requests further information, the relevant building surveyor must examine the proposal for protection work and determine whether the building work is appropriate. The relevant building surveyor must give the owner and adjoining owner notice in writing of the determination. A property owner or the adjoining owner may appeal within 14 days to the Building Appeals Board against the determination.



Obtain contract of insurance

The owner of the property where the building work is to be carried out must ensure that a contract of insurance is in force against potential damage caused by the proposed protection work to the adjoining property.

The insurance policy must protect the adjoining property, occupiers and the general public during the works and for a period of 12 months following completion of the work. A standard Construction and Public Liability policy will not normally provide the minimum cover required. It is strongly advisable to check with your preferred insurer.

The contract for insurance must be with an insurer for an amount agreed between the owner and adjoining owner. A copy of the insurance policy must be provided to the adjoining owner before building work commences.

Prepare a survey of adjoining property

A full and adequate survey of the adjoining property must be prepared by the owner with the adjoining owner. The survey must be a record of all existing cracks and defects.

This record must be signed or acknowledged as an agreed record of the condition of the adjoining property before the commencement of any protection work.

Disputes about insurance cover or the adequacy of the survey can be referred to the Building Appeals Board for a resolution.

Pay expenses incurred

A property owner is required by law to pay expenses necessarily incurred by the adjoining owner in protecting their interests. These costs include specialists' fees to check protection work documentation and expenses relating to the actual supervision of protection work following commencement on-site.

What obligations and rights does an adjoining owner have?

The Act sets out clearly the rights and responsibilities of the adjoining property owner and/or occupier throughout the process, including response to notices, absent owners, appointment of agents, entry to properties, out of pocket expenses, compensation and liability. Their obligations and rights include the following:

- Once a Protection Work Notice has been served, the adjoining owner must respond within 14 days of the notice being served
- The adjoining owner can agree or disagree to the proposed protection work or require further information to be provided
- An adjoining owner who fails to respond to the notice within the required time is deemed to have agreed to the proposed protection work
- The adjoining owner must assist the property owner prepare a full and adequate survey of their property before the commencement of the protection work
- The adjoining owner has the right to seek reimbursement from the property owner for any reasonable expenses incurred while protecting their interests.

The relevant building surveyor may be able to offer some guidance to specific obligations but cannot act as an arbiter between owners and adjoining owners.

What if a dispute occurs?

Disputes about any aspect of protection work legislation can be referred to the Building Appeals Board for a resolution. Any other matter not within the jurisdiction of the Building Appeals Board can be pursued through the court system but this is usually very costly and time consuming. The Building Appeals Board can be contacted on 9285 6400.

Need more information?

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