

An overview of Part 7 of the *Building Act* (Vic) 1993 -

Protection Work

A seminar presented at
Melbourne University Law School -
Masters in Construction Law
October 2017

FORM 3

Regulations 602(2), 602(3)

Building Act 1993

Building Regulations 2006

PROTECTION WORK NOTICE

To

Adjoining owner

Postal address

Postcode

Relevant building surveyor

Postal address

Postcode

Contact person

Telephone

From

Owner/agent

Postal address

Postcode

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

Number	Street/road	City/suburb/town	
Lot/s	LP/PS	Volume	Folio
Crown allotment	Section	Parish	County
Municipal district			

Adjoining property details

Number	Street/road	City/suburb/town	
Lot/s	LP/PS	Volume	Folio
Crown allotment	Section	Parish	County
Municipal district			

Part 7 – s.84

Notice of building work to be given

- Form 3

Details of proposed protection work and program

Nature, location, time and duration of protection works:

Signature

Signature of owner or agent

Date

NOTE

Under section 85 of the **Building Act 1993**, the adjoining owner must respond to a notice under section 84 of that Act by giving to the owner within 14 days a notice under section 85 of that Act—

- (a) agreeing to the proposed protection work; or
- (b) disagreeing with the proposed protection work; or
- (c) requiring more information.

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

In the case of (b) and (c) above, a copy of the notice under section 85 of that Act must also be given to the relevant building surveyor (see Form 4).

s.85 - Adjoining owner must respond to notice

- Form 4

FORM 4		
Regulations 602(4), 602(5)		
Building Act 1993		
Building Regulations 2006		
PROTECTION WORK RESPONSE NOTICE		
To		
Owner or agent		
Postal address		Postcode
Relevant building surveyor		
Postal address		Postcode
From		
Adjoining owner		
Postal address		Postcode
Contact person		Telephone
Address of property where building work is to be carried out (from Form 3)		
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		<input type="checkbox"/>
(b) disagree with the proposed protection work for the following reasons		<input type="checkbox"/>
(c) request the following further information		<input type="checkbox"/>
Signature		
Signature of adjoining owner or agent		
Date		
NOTE		
The notice under section 85 of the Building Act 1993 must be given to the owner or agent within 14 days of being served with a notice under section 84 of that Act and in the case of (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 .		

s.86 - Effect of agreement



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



s. 88(1) - Work not to be carried out until protection requirements met

s. 88(2) - Work must be carried out in accordance with protection requirements

Breach =


- 100 penalty units, in the case of a natural person.
- 500 penalty units, in the case of a body corporate.

s.93 - Owner to arrange insurance cover

Key issues:

- It is the responsibility of the Owner, not the Adjoining Owner to ensure that appropriate Protection Works Insurance is in place;
- The Insurance must provide cover for any liabilities likely to be incurred by the Adjoining Owner
 - during the building work and
 - for a period of 12 months after the building work is completed;
- The Insurance is to be taken out by the Owner and not their Builder, as Protection Works Insurance is an entirely different creature from Building Insurance;
- The Insurance policy must be for a value agreed to by the Adjoining Owner
- The Insurance must cover damage to the Adjoining Owners property, whether arising indirectly or directly from the Protection Works


s.94 - Survey of adjoining property




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PHOTOGRAPH 22
Damage to glass windows.



PHOTOGRAPH 23
Damage to glass windows.

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PHOTOGRAPH 32
Grout in brickwork brittle and in poor condition, cracking visible throughout brickwork.



PHOTOGRAPH 33
Grout in brickwork brittle and in poor condition, cracking visible throughout brickwork.

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s.95 - Entry on adjoining property
**s.96 - Adjoining owner and adjoining occupier
not to obstruct owner**



s.97 - Expenses of adjoining owner
s.98 - Compensation



THE BUILDING REGULATIONS 2006

- Reg. 602 prescribes the forms to be used
- Reg. 603- 606 deal with technical matters

Reg. 603 - Exceptions to carrying out protection work

... an owner is not required to carry out protection work in respect of an adjoining property ...if—

- (a) no buildings are to be erected or building work is to be carried out or equipment is to be used on, over, under, or in the air space of the adjoining property; and
- (b) before commencing the building work the owner provides the relevant building surveyor with—
 - (i) a certificate under section 238 of the Act from the engineer who designed the building work ..., certifying that the structural design of the building work complies with the Act and these Regulations; and
 - (ii) a further certificate under section 238 of the Act from an independent engineer ..., certifying that the structural design of the building work complies with the Act and these Regulations; and
- (c) the relevant building surveyor is satisfied that the building work will not adversely affect the stability of, or cause damage to, the adjoining property; and
- (d) before carrying out the building work, the owner provides the adjoining owner with a copy of the certificates provided under paragraph (b), and all documents referred to in the certificates.

Role of Building Appeals Board

- The BAB hears appeals from decisions of the RBS
- And determines disputes between neighbours e.g.
 - In respect of the Form 3 and Form 4 steps – s.141
 - Over emergency protection works – s.151
 - Adequacy of insurance – s.152
 - Adequacy of survey of the adjoining property – s.153
 - Costs and expenses of supervising p/works – s.154
 - Any other disputes under Part 7 (such as compensation) – s.155

Structure and Powers of BAB

- The Building Appeals Board (BAB) is an independent statutory body established under the *Building Act 1993*.
- It is a panel of building experts
- Aims to avoid legal representation
- Must accord natural justice but otherwise not bound by rules
- BAB decisions cannot be appealed, except to the Supreme Court on matters of law.



Examples of Protection Works cases

Mt Waverley
collapse



Richmond



Janney & Ors v Steller Works Pty Ltd [2017] VSC
363



Colonial Range Pty Ltd v

*CES-Queen (Vic) Pty Ltd / Akritidis /
Victorian Building Authority / Thomas*

[2014] VSC 272

[2015] VSC 120

[2015] VSC 564

[2015] VSCA 356

[2016] VSC 494

[2016] VSCA 328

[2017] VSC 256

[2017] VSC 317

[2017] VSC 337

[2017] HCASL 95

And many more!





AUGUST 2017

PROJECT UPDATE.

Following on from the previous project update in May, demolition works at Tower Melbourne continue to be delayed by the ongoing series of Building Appeal Board and legal disputes with an adjoining owner concerning the protection of their adjoining buildings. We understand that these continuing delays are frustrating, and we share your frustration.



Questions?

