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

Regulations 602(4), 602(5)	
Building Act 1993	
Building Regulations 2006	
PROTECTION WORK RESPONSE NOTICE	
То	
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	
n 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	
Signature of adjoining owner or agent	
Date	
IOTE	
The notice under section 85 of the Building Act 1993 must be given to the owner or gent within 14 days of being served with a notice under section 84 of that Act and in the ase of (b) or (c) must also be given to the relevant building surveyor who must etermine the matter under section 87 of the Building Act 1993 .	

FORM 4

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 =

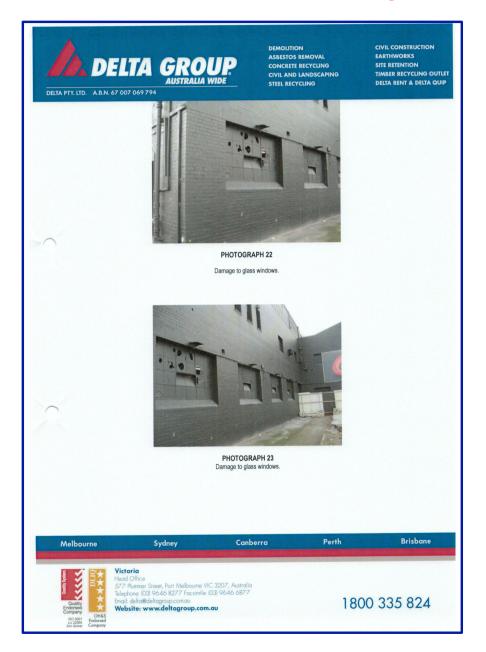
- 100 penalty units, in the case of a natural person.
- 500 penalty units, in the case of a body corporate.

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





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; <u>and</u>
- (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; <u>and</u>
- (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.

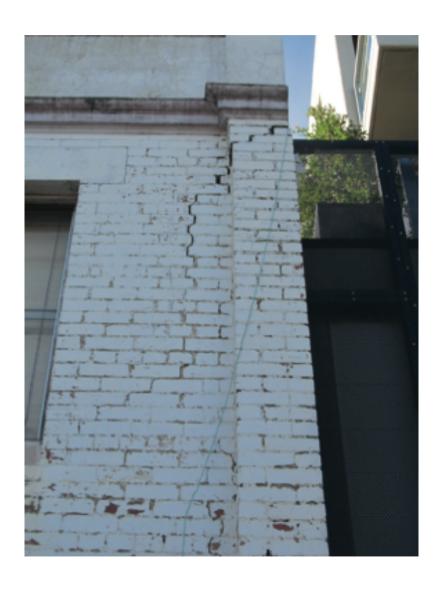


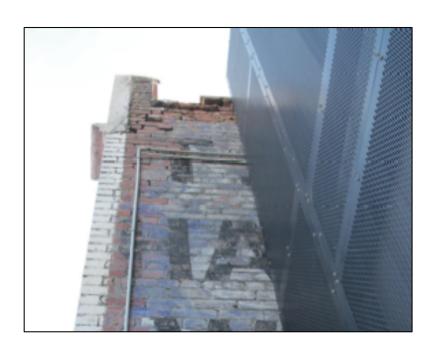
Examples of Protection Works cases

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?

