

Daville Building Surveying

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PROTECTION OF ADJOINING PROPERTIES INFORMATION PACK

Pursuant to Regulation 602 of the Building Regulations 2006 and Section 84 of the Building Act 1993

When is protection of the adjoining property required?

An owner is required to carry out protection work in accordance with the Building Regulations where building work may pose a risk of significant damage to the structural support of an adjoining property.

What are the requirements of Protection of adjoining property?

If required by the Relevant Building Surveyor (RBS), the property owner must serve on the adjoining property owner and the RBS notice of the proposed building and protection work (Form 3 – Protection Work Notice). The notice must include detail of the proposed building work and details of the proposed protection work including the nature, location, time and duration of the protection work along with copies of all relevant architectural and structural plans, and any relevant site survey.

The adjoining property owner then has 14 days to give the RBS a response (Form 4 – Protection work response notice), either agreeing to the protection works, disagreeing to the protection works or requiring additional information to be given. In the event of a disagreement OR request for additional information the RBS will provide both the owner and property owner with a written determination.

When the adjoining property owner fails to respond.

In the event that the adjoining property owner fails to respond within the required 14 days they are deemed to agree with the proposed protection work.

Commencement of building work

Building works may only commence when –

- There is an agreement to the protection work (actual or deemed agreement);
- The matter has been determined by the RBS;
- The matter has been determined by the Building Appeals Board (upon appeal).

Protection work must be undertaken strictly in accordance with the protection works proposed after obtaining the relevant permits and approvals.

Insurance coverage

Although the Building Surveyor does not need to be provided with a copy, the owner is required under this section to obtain an insurance policy in the favor of the adjoining owner before protection work begins. It is recommended that owners seek the advice of professional insurance brokers or agents to ensure the requirements of this section are met satisfactorily. Non-compliance involves a statutory offence of up to \$10,000 for an individual, or \$50,000 dollars for a body corporate.

There are two typical types of insurance. The application of each will vary depending on the size of the project. The two insurances are;

- (i) Home Building Insurance
- (ii) Contract Works Liability Insurance

Generally the builder should already be carrying either of these forms of insurance. Where protection work is required, the building owner must ensure that;

- a) Their name is specifically mentioned on the policy;
- b) The policy includes the 12 month extension beyond works completion (this provision is not a standard clause in these policies);
- c) The policy is specifically endorsed to include protection of adjoining property and Part 7 of the Building Act 1993 (Many policies are not specific in relation to these matters).

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 which could potentially be damaged by the proposed building works. 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.

Entry onto adjoining property.

An owner or his/her agent may enter between the hours of 8:00am and 6:00pm on any adjoining property to carry out the protection works provided not less than 24 hours' notice is given.

The adjoining owner/occupier must not refuse to admit the owner or his/her agent/s onto the adjoining property for the purposes of conducting the protection works. This does not extend to general construction work which requires a separate agreement.

The Building Surveyor Role.

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

The Relevant Building Surveyor should refrain from acting as an arbiter where there is disagreement. If the determination is challenged via an appeal to the Building Appeals Board, then the Relevant Building Surveyor should provide the Building Appeals Board whatever evidence and/or information is necessary in order for the Building Appeals Board to resolve the situation.

Even if the owner and adjoining owner have agreed to the protection works, the Relevant Building Surveyor should ensure that the design of the protection work and the appropriateness of the protection work provide the level of protection and safety required by the Building Act. This may include inspection of the protection work during construction, issuing of building notices and orders as required under Part 8 of the Act.

Procedure for Serving Protection Notices

Notices for the protection of adjoining properties (Form 3 – Protection Work Notice & Form 4 – Protection work response notice) should be served on the adjoining property owners in the following manner:-

Step 1 – Prepare a cover letter.

The cover letter should include (but not be limited to) the following;

- Mention the adjoining property effected by the work;
- Describe the extent of the work;
- Describe the work methods to be adopted so that the extent of protection measures proposed can be related to the nature and manner of the proposed building work;
- Mention that a dilapidation report has been or will be carried out as appropriate (photos, written description of existing conditions, etc.);
- Reference the insurance provisions made for the protection works;
- State the program for the works, give an approximate commencement date and the duration of the works;
- List all measures including any temporary hoardings to be erected and confirm that safe building procedures will be adopted to ensure protection of persons and property;
- Include details (plan number, revision and number of pages) of all relevant attachments to enable the proposal to be assessed.

Step 2 – Include/attach the relevant documents.

- A set of structural drawings showing the location and depth of site cut and/or fill, footings/slab design, computations and Certificate of Compliance - Design;
- Copy of the soil report;
- A set of architectural plans;
- Details of the required protection measures such as hoarding plans, scaffolding details, roof planking etc.;
- Completed Form 3 – Protection Work Notice, listing all the relevant documentation.

Step 3 – Serve the Protection Notices

- a) Send the package along with three blank copies of the Form 4 – Protection work response notice to each adjoining property owner.
(Three copies so that one copy can be kept by the adjoining owner, one copy returned to you, and one copy returned to the Building Surveyor).
- b) Send a duplicate of the entire package to the RBS. (Including proof of service by completing the enclosed declaration as evidence that the documents have been served and on what date).

Step 4 – Completed Protection Notices

The adjoining owner completes the Form 4 – Protection work response notice and sends one to you, one to the RBS and keeps one for their own records. If the adjoining owner does not respond within 14 days it will be deemed that they have agreed on the basis of the documents presented to them.

Notes –

- Serving of documents may be by the following means:-
 - a) Delivery in person; or
 - b) By registered mail.

Protection of Adjoining Properties Declaration

Declaration from the owner of land who is required to provide protection for an adjoining property

I,

Name:	
Being the owner of:	

Do solemnly and sincerely declare:-

1. That I have been required to provide protection for the adjoining property pursuant to Regulation 602 of the Building Regulations 2006 (the regulations).
2. That in accordance with Section 84 of the Building Act 1994 (the act) I served the documents outlined below on the owner/s of the adjoining property situated at:

Adjoining property address:	
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A notice in accordance with Form 3 of the Regulations (Protection Work Notice) accompanied by three copies of Form 4 – Protection work response notice together with:-

- A covering letter outlining:
 - The adjoining property effected by the work;
 - The extent of the work;
 - The work methods to be adopted so that the extent of protection measures proposed can be related to the nature and manner of the proposed building work;
 - That a dilapidation report has been or will be carries out as appropriate (photos, written description of existing conditions, etc.);
 - The insurance provisions made for the protection works;
 - The program for the works, give an approximate commencement date and the duration of the works;
 - All measures including any temporary hoardings to be erected and confirm that safe building procedures will be adopted to ensure protection of persons and property;
 - Details (plan number, revision and number of pages) of all relevant attachments to enable the proposal to be assessed.
- A set of architectural plans:
- A set of structural drawings showing the location and depth of site cut and/or fill, footings/slab design, computations and Certificate of Compliance – Design:
- Copy of the soil report:
- Details of the required protection measures such as hoarding plans, scaffolding details, roof planking etc.

3. That these documents were served by:

Method documents served	
Date Served	

Signature of Owner

Name			
Signature		Date	

FORM 3 – PROTECTION WORK NOTICE
 Building Act 1993, Building Regulations 206
 Regulations 602(2), 602(3)

TO:

Adjoining Owner	
Postal Address	

Relevant Building Surveyor	David Kors – Daville Building Surveying		
Postal Address	602 Somerville Street, Buninyong VIC 3357		
Contact	03 5341 8041	Email	david@daville.com.au

FROM:

Owner/Agent			
Postal Address			
Contact		Email	

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

Property Details (Building work site)

Address			
Lot/s		LP/PS	
Volume		Folio	
Crown Allotment		Section	
Parish		County	
Municipal district			

Adjoining Property Details (Your Site)

Address			
Lot/s		LP/PS	
Volume		Folio	
Crown Allotment		Section	
Parish		County	
Municipal district			

Details of Proposed Protection Work & Program

Nature	
Location	
Commencement	
Duration	

Signature of Owner

Name			
Signature		Date	

- NOTE** Under section 85 of the Act, 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 the Act:
- (i) Agreeing to the proposed protection work;
 - (ii) Disagreeing to the proposed protection work; or
 - (iii) Requiring more information

Failure to respond will be taken as agreement to the proposed protection work.
 In the case of (ii) and (iii) above, a copy of the notice under section 85 of that Act must also be given to the relevant building surveyor (see form 4).

FORM 4 – PROTECTION WORK RESPONSE NOTICE

Building Act 1993, Building Regulations 206

Regulations 602(4), 602(5)

TO:

Owner/Agent	
Postal Address	

Relevant Building Surveyor	David Kors – Daville Building Surveying		
Postal Address	602 Somerville Street, Buninyong VIC 3357		
Contact	03 5341 8041	Email	david@daville.com.au

FROM:

Adjoining Owner			
Postal Address			
Contact		Email	

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

Number		St/Rd		City	
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Address of my adjoining property

Number		St/Rd		City	
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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 –

(i)	Agree with the proposed protection work.	Yes - No
(ii)	Disagree with the proposed work for the following reasons:	
(iii)	Request the following further information:	

Signature of Owner

Name			
Signature		Date	

Note The notice given 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 (ii) or (iii) must also be given to the relevant building surveyor who must determine the matter under section 87 of the Building Act 1993