

What is Protection Works and When is it needed?

Protection work is defined in the Building Act 1993 as temporary or permanent work of:

- Underpinning, including the provision of vertical support, lateral support, protection against variation in earth pressures, provision of ground anchors and other support for the adjoining property,
- Shoring up of adjoining property,
- Overhead protection of adjoining property,
- Other work designed to maintain the stability of adjoining property or to protect adjoining property from damage from building work, or
- Any work or use of equipment necessary for the provision, maintenance and removal of work referred to above.

A common situation is site cuts/footing excavations, retaining walls or other building work near property boundaries. Whether or not the work or equipment is carried out or used on, over, under or in the air space above the land on which the building work is or is to be carried out or the adjoining property.

Form 6 Determination that Protection Works is required is issued to the owner by the relevant building surveyor.

Form 7 Protection Work Notice is served on the adjoining owners and the relevant building surveyor, with details of the proposed building work, setting out the nature, location, time and duration of the protection works. Accompanying this notice should be:

- **Form 8** Protection Works Response Notice
- Copy of relevant plans, and
- Copy of relevant soil report, computations and any structural certifications.

Adjoining Ownership Details

Adjoining property ownership details can be requested from the Glenelg Shire Council Building Services Unit or alternatively perform a title search on www.landdata.vic.gov.au

'Adjoining property' is defined in the Building Act 1993, as land (including any street, highway, lane, footway, square, alley and right of way) which is so situated in relation to the site on which building work is to be carried out, as to be at risk of significant damage from the building work. Therefore, this may include existing ground, paths/driveways, buildings, fences, garden areas, trees, sewers/storm water drains and other improvements on an adjoining property.

Adjoining Land Owner Not in Agreeance

Notwithstanding the above, and pursuant to the provisions of Section 87(4) Building Act 1993, if the adjoining owner does not agree, the Building Surveyor shall determine the appropriateness of the protection work and formally advise both the owner and the adjoining owner. In making such a determination, the Building Surveyor, may ask the owner to give more information, or may make any inquiries but is not required to give any person a hearing.

Any party may appeal against any determination of the Building Surveyor under Section 87(4) Building Act 1993 within 14 days of such determinations. Any appeal lodged with the Building Appeals Board stays the effect of any determination. It is suggested that the adjoining owner or owner advise the Building Surveyor in writing as soon as possible if it is proposed to appeal the determination, so that protection work does not commence.

Insurance

Pursuant to Section 93 of the Building Act 1993, before works relating to the protection works commence, a contract of insurance against damage to the adjoining property or any liabilities likely to be incurred to adjoining occupiers or members of the public during (and for 12 months after) the carrying out of the building works is needed. The contract amount should be agreed to by the adjoining owners (or in the event of a dispute, as determined by the Building Appeals Board) and a copy given to the adjoining owners prior to commencing any protection work. The contract of insurance must be renewed or extended as often as necessary during the carrying out of the building work and for 12 months after the work is completed. The owner must lodge a copy of a document evidencing the renewal or extension of the contract of insurance with the adjoining owners as soon as practicable after the renewal or extension.

Existing Conditions Report

Pursuant to Section 94 of the Building Act 1993, an existing conditions survey/record should be jointly carried out, recorded and agreed to by the owner and the adjoining owner prior to the commencement of any works. It is suggested that the survey should be in the form of a jointly signed photographic record with notes/sketches, etc. It is noted that the survey/record is admissible in evidence in any proceedings relating to the adjoining property and is evidence of the condition of the adjoining property at the time the record was made.

If desired, a copy of the contract of insurance and existing conditions survey can be forwarded to the Building Surveyor as a matter of record. However, please note that these issues are outside the Building Surveyor's jurisdiction and any disputes need to be dealt with through the Building Appeals Board.

Entry to Adjoining Property

The owner or builder may, pursuant to Section 95 Building Act 1993, enter the adjoining property between 8am and 6pm to carry out the survey or approved protection work, with not less than 24 hours notice, (or such other notice that may be agreed to). In the course of carrying out any protection work an owner may, without doing any unnecessary damage, remove any furniture or fittings in the adjoining property which obstruct the carrying out of the work.

Costs to Adjoining Land Owner

Pursuant to Section 97 Building Act 1993, the owner must pay the adjoining owner all agreed (or in the absence of an agreement as determined by the Building Appeals Board), costs and expenses incurred by the adjoining owner in assessing proposed protection work or supervising the carrying out of the protection work.

If you have any further questions regarding any aspect of carrying out building work please do not hesitate to contact Glenelg Shire Council - Building Unit
Telephone: 03 5522 2216 or Email: building@glenelg.vic.gov.au