FORM 7
Building Act 1993
Building Regulations 2018
Regulation 113
PROTECTION WORK NOTICE

To

Adjoining Owner Name _____

Postal Address _____ Post Code _____

Process for obtaining adjoining owner details ☐ Relevant Council ☐ Other *(specify)* _____

Method of delivery of Form 7 ☐ Registered Mail ☐ In Person

Proof for obtaining adjoining owner details and method of delivery to be forwarded to the Relevant Building Surveyor

Adjoining Owner's Property Details (the adjoining property)

Address _____

Lot/s _____ LP/PS _____ Volume _____ Folio _____

Crown Allotment _____ Section _____ Parish _____ County _____

Municipal District (Council) _____

From

Owner/Agent Name _____

Postal Address _____ Post Code _____

Contact Person _____ Telephone _____

Owner's Property Details (the property on which building work is to be carried out)

Address _____

Lot/s _____ LP/PS _____ Volume _____ Folio _____

Crown Allotment _____ Section _____ Parish _____ County _____

Municipal District (Council) _____

Relevant Building Surveyor **Vic Permits Building Surveyors**

Postal Address **PO Box 24222, Melbourne 3001**

Contact Person **Relevant Building Surveyor** Telephone **03 9363 1799**

NOTICE

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 property and request your agreement to the proposed protection work which affects your adjoining property.

In accordance with section 85 of the Building Act 1993, and subject to sections 90 and 91 of the Act, you will be taken to have agreed to the protection works proposed in this notice if you do not respond within 14 days after this notice is served on you.

A response to this notice must be in the form of Form 8 of the Building Regulations 2018, include the information in that form, and be given to the owner and the relevant building surveyor whose details are set out in this notice.

Details of Proposed Building Work (include description of works being carried out and details about damage etc. that may be caused to adjoining property)

Details of Proposed Protection Work (include the extent to which access to the adjoining property will be required for the purpose of undertaking the proposed protection work)

Nature _____

Extent to which access is required _____

Location ☐ On common boundary ☐ Within our building site ☐ Other *(specify)*: _____

Time _____

Duration _____

Information About Protection of an Adjoining Owner Under the Building Act 1993 in Relation to Proposed Protection Work

In accordance with Section 85 of the **Building Act 1993**, and subject to Sections 90 and 91 of the Act, you will be taken to have agreed to the protection works proposed in this notice if you do not respond within 14 days after this notice is served to you.

A response to this notice must be in the form of Form 8 of the Building Regulations 2018, include the information in that form, and be given to the owner and the relevant building surveyor whose details are set out in this notice.

In accordance with Section 92 of the **Building Act 1993**, at any time after this notice is given to the adjoining owner, the relevant building surveyor must make available to the adjoining owner, on request, for inspection, without charge, any plans, drawings and specifications of the proposed building work in the possession or control of the relevant building surveyor. The relevant building surveyor's name and contact details are on page 1 of this notice.

If the proposed protection work is agreed by the adjoining owner or determined as being appropriate by the relevant building surveyor under Section 87(1) of the **Building Act 1993** or by the Building Appeals Board under Section 141 of the **Building Act 1993** (as the case requires), the owner must:

(a) before the commencement of any protection work–
    i. ensure that a contract of insurance is in force in accordance with Section 93 of the Building Act 1993 against damage by the protection work to the adjoining property and other liabilities described in that section; and
    ii. make a full and adequate survey of the adjoining property in accordance with Section 94 of the **Building Act 1993**; and

(b) pay to an adjoining owner all costs and expenses necessarily incurred by the adjoining owner in assessing proposed protection work and in supervising the carrying out of protection work in relation to an adjoining property in accordance with Section 97 of the **Building Act 1993**; and

(c) compensate an adjoining owner or an adjoining occupier for inconvenience, loss or damage suffered by the adjoining owner or adjoining occupier in connection with the carrying our of protection work in accordance with Section 98 of the **Building Act 1993** or an order of the Building Appeals Board under Section 159 of the Act.

Signature

Signature of Owner/Agent of Owner _____ Date _____

Building Approved Statement

This statement is approved by the VBA for the purposes of regulation 113(1) of the Building Regulations 2018.

The purpose of this statement is to provide adjoining owners with information about the operation of the protection work process under the Building Act 1993 (the Act) and the Building Regulations 2018 (the Regulations).

Abbreviations & Definitions

- **Adjoining owner –** the owner of an adjoining property
- **Adjoining property –** 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 be carried out, so as to be at risk of significant damage from that building work
- **Building Appeals Board –** the Building Appeals Board (BAB) under Part 10 of the Act
- **Owner –** In relation to a building, means the owner of the land on which the building is situated
- **Protection work –** work that may include:
  a) Underpinning, including vertical support, lateral support, protection against variation in earth pressures, ground anchors and other support for the adjoining property
  b) Shoring up of the adjoining property (which may include retaining walls and bored piers)
  c) Overhead protection for adjoining property
  d) Other work designed to maintain the stability of adjoining property or to protect it from damage from building work
  e) Any work or use of equipment necessary for the provision, maintenance and removal of work referred to above, 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
- **MBS** – Municipal Building Surveyor
- **RBS –** Relevant Building Surveyor
- **Section –** a section of the Building Act 1993.

The protection work process - introduction

An owner is entitled to carry out building work on their land. However, sometimes that work has the potential to cause damage to adjoining property. The Act provides a process for the protection of adjoining property from the risk of significant damage of that type. The requirements relating to protection of adjoining property are contained in Part 7 of the Act and Division 1 of Part 7 of the Regulations.

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Examples of when adjoining property can be affected are when building work involves excavations, where the building work is adjacent to boundary walls, and where there is a risk of building materials or equipment falling across boundaries during the construction process.

Common types of protection work include:

- Retaining walls
- Bored piers
- A gantry or other overhead barriers to prevent material from falling onto a roof or other part of the adjoining property
- Propping of party walls or common walls
- Underpinning of existing footings.

The RBS plays a central role in the protection work process, determining whether protection work is required, overseeing the consultation process and ensuring that proposed protection work is adequate. The independence of the RBS is critical to their role in the process.

Where protection work is required, the adjoining owner must be consulted about proposed work or other actions that will be undertaken to protect their property.

An owner or adjoining owner can appeal to the BAB against decisions of the RBS relating to protection work. The BAB can also determine disputes between an owner and an adjoining owner about protection work matters.

The distinction between protection work and building work

Protection work is work to protect an adjoining property. It may be temporary or permanent. It can be done on an adjoining property or on the building site where the building work is occurring, or both. Where protection work needs to be done on the adjoining property, the Act (section 95) allows for access to the adjoining property to undertake the required protection work

Building work is the work being done that gives rise to the need for protection work. Building work can only be done within the boundaries of the building site for which a building permit is issued.
The protection work process does not entitle an owner to access an adjoining property to undertake building work. Access to an adjoining property to conduct building work must be arranged by agreement with the owner of the adjoining property.

Overview of the role of the RBS

The role and responsibilities of the RBS in relation to protection work are summarised as follows:

- To determine whether protection work is required as part of the assessment of a building permit or at any time during the construction phase when it becomes apparent that protection work may be required (regulations 111-112)
- To document their determination that protection work is required (regulation 111)
- To review any protection work notices exchanged between the owner and the adjoining owner
- To assess whether the proposed protection work is adequate
- To create the required records relating to the above actions throughout the process
- To lodge documents with the relevant council (sections 30 or 73; regulations 44 or 203)
- To participate in any appeals or other proceedings before the BAB as required
- To monitor the carrying out of the protection work at mandatory inspections or at any other time as required and take any necessary action if there is any danger to life or property
- To act independently at all times to assist owners and adjoining owners through the process.

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Overview of role of the owner

The role and responsibilities of the owner in relation to protection work is summarised as follows:

- to provide adequate information about the proposed building work to the RBS in the building permit application
- where protection work is required by the RBS, to prepare a notice in the form of a Protection Work Notice (Form 7 notice) in accordance with the prescribed requirements in regulation 113
- to serve the Form 7 notice, with documents set out in regulation 113(1) on the adjoining owner having regard to section 236
- to provide any additional information requested by the RBS
- not to undertake any building work giving rise to the requirement for protection work until—
    a) the adjoining owner has agreed to the protection work
    b) the matter is determined by the RBS
    c) any appeal is determined by the BAB (section 88(1)).
- to only carry out work in accordance with the agreement, the RBS's determination or the determination of the BAB (section 88(2)), as applicable
- to carry out emergency protection work if required by the VBA under section 89
- to arrange insurance cover for the protection work before any protection work commences in accordance with section 93 of the Act
- to arrange for a survey of the adjoining property before any protection work commences in accordance with section 94
- to ensure that the record of survey is signed or otherwise acknowledged as an agreed record of the condition of the adjoining property before the commencement of protection work
- to provide compensation to the adjoining owner for necessarily incurred costs and expenses, inconvenience, loss, or damage (sections 97 and 98), as agreed between the parties or as determined by the BAB
- to serve the adjoining owner and the RBS with a complete set of plans, drawings and specifications showing the protection work undertaken no later than 2 months after the protection work is completed (section 101)

Overview of role of the adjoining owner

The role and responsibilities of the adjoining owner in relation to protection work is summarised as follows:

- to respond to a Form 7 notice served by an owner, within 14 days of service, by—
    a) giving the owner, a Protection Work Response Notice (Form 8 notice) agreeing to the proposed protection work; or
    b) giving the owner and the RBS, a Form 8 notice disagreeing to the proposed protection work or requesting more information to enable further consideration by the RBS

An adjoining owner who fails to respond in the required time is taken to have agreed to the proposed protection work.

- may inspect at no cost, drawings and specifications of the proposed building work in the possession of the RBS once a notice of intention to commence the carrying out of building work is given (section 92).
- consider the insurance cover for the protection work proposed by the owner, and agree, or refer a dispute to the BAB (section 93).
- accompany, or arrange for an agent to accompany, the owner or their agent on a survey of the adjoining property (section 94).
- sign, or otherwise acknowledge as agreed, a record of the condition of the adjoining property, or refer a dispute to the BAB. The record of survey must be signed and agreed to by all parties before protection work can commence.
- provide access to the owner or the owner's agent to the adjoining property, after not less than 24 hours notice, or other notice as agreed between the parties, to carry out the survey of the adjoining property, or to carry out the protection work (sections 95 and 96).
- assess proposed protection work and supervise the carrying out of protection work. Costs and expenses necessarily incurred by the adjoining owner must be paid by the owner, as agreed between the parties, or as determined by the BAB (section 97).

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- may apply to the VBA for a declaration that emergency protection work is required (section 89).
- receive from the owner, a complete set of plans, drawings and specifications showing the protection work undertaken, no later than 2 months after the protection work is completed (section 101).

When is protection work required?

Protection work is only required when the RBS determines that it is required under regulation 111. That determination must be set out in the form of a Determination that Protection Work is Required (Form 6). Protection work must be provided by the owner in relation to an adjoining property, before and during the carrying out of any building work, if the RBS determines that it is required.

Regulation 112 sets out the matters the RBS must consider in determining if protection work is required in relation to an adjoining property, which are as follows.

- The allotment plan provided with the application for building permit under regulation 25 or 26
- Specifications that describe materials and methods to be used in the proposed building work
- Any demolition required as part of the proposed building work
- Any excavation required as part of the proposed building work
- Any proposed building work in relation to party walls and retaining walls
- The nature and likely extent of any damage or other adverse effect on the stability or otherwise of any adjoining property that may be caused by the proposed building work
- Any certificate under section 238 from a registered building practitioner in the category of engineer, class of engineer (civil), certifying that the structural design of the building work complies with the Act and Regulations; and
- Any other matter the RBS considers relevant.

The definition of 'adjoining property' refers to land that is at risk of 'significant damage' from building work. The term 'significant damage' is not defined in the Act. When considering whether there could be 'significant damage' to adjoining property the RBS should have regard to potential damage to buildings, driveways, paving, gardens, other structures and to potential soil subsidence on the adjoining land.

Protection work notices

Having decided that protection work is required, the RBS sets in motion a process that provides both the owner and adjoining owner with certain rights and obligations. It is critical that the administrative process is carried out correctly for those rights to be exercised. The process is summarized below.

Section 84 requires the owner to serve the adjoining owner and the RBS with a Form 7 notice in accordance with regulation 113. The Form 7 notice must contain detailed information about the proposed protection work including:

- The determination of the RBS made under regulation 111 set out in a Form 6
- 3 copies of the Form 8 notice (or, if the adjoining owner consents to receiving the information electronically, 1 copy)
- A statement in a form approved by the VBA that explains the protection work process (this statement);
- Plans and specifications with sufficient detail to show how the proposed building work will affect the adjoining property
- Plans and specifications with sufficient detail to show how the proposed protection work will protect the adjoining property from damage or other adverse effect caused by the proposed building work
- An allotment plan complying with regulation 25(1)(d).

Section 85 requires the adjoining owner to respond to the owner's Form 7 notice in the form of a Form 8 notice in accordance with regulation 114 within 14 days of being served the Form 7 notice.

The RBS must consider the Form 7 and Form 8 notices and determine whether the proposed protection work is appropriate (section 87(1)). If agreement has not been reached between the owner and adjoining owner, the RBS must follow the procedure in section 87 before making a determination.

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Absent or incapable adjoining owner

If the adjoining owner cannot be found or is incapable of acting, the owner may apply to the Minister for the appointment of a suitable person to act as agent of the adjoining owner during their absence or incapacity (sections 90 and 91).

Before making an application to the Minister under section 90, the owner must make all reasonable inquiries to determine whether an administrator for the adjoining owner has been appointed under the Guardianship and Administration Act 2019.

An adjoining owner may revoke the appointment of an agent by the Minister, but that revocation does not affect the validity of the agent's actions before the revocation.

Independence of the RBS

The RBS acts as an independent decision maker in the protection work process. The RBS must not prepare the Form 7 notice for the owner or 'approve' the proposed protection work before the notice is given to the adjoining owner.

The RBS should inform the owner or their agent of the reasons for requiring protection work, so they can formulate the proposed protection work and provide the details required in the Form 7 notice to the adjoining owner.

If the adjoining owner does not respond to the Form 7 notice, the RBS should satisfy themselves that the Form 7 notice has been properly served in accordance with section 236). The RBS should ask how the notice was served and consider contacting the adjoining owner to make sure they have received the notice.

If the adjoining owner agrees to the protection work, the RBS must not assume that the proposed protection work is appropriate. The RBS must review the proposed protection work, satisfy themselves that:

- the work is actually protection work; and
- it is appropriate to protect the adjoining property, and
- make a decision on whether to approve the building permit.

If the RBS is not satisfied with the proposed protection work, they should refuse to issue the building permit until a revised proposal is made.

If the RBS is not satisfied that the prescribed information was provided in the Form 7 notice, including that the proposed protection work is not detailed adequately in plans and specifications provided with the Form 7 notice, the RBS should request additional information. The RBS should also require the owner to revise the Form 7 notice and re-serve it on the adjoining owner.

Making a determination under section 87

Where the adjoining owner disagrees with the proposed protection work, or requires more information, the RBS must examine the proposal for protection work and determine the appropriateness or otherwise of the work under section 87.

If a request for information is made by the adjoining owner, the RBS must consider if the request is reasonable; and if it is:

- make a request to the owner for that information; and
- provide the information to the adjoining owner.

If the RBS considers the request for information is not reasonable, they should advise the adjoining owner of that decision in writing including the reasons for that decision. The RBS can then make any other inquiries they think fit (section 87(3)) and proceed to make their determination under section 87(1).

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The determination made under section 87 must be in the form of a Notice of Determination Under Section 87 of the Act (Form 9).

The RBS must give a copy of the Form 9 notice to the owner and adjoining owner (section 87(4)) in accordance with section 236 of the Act.

Appeals against a section 87 determination

The owner or adjoining owner have 14 days from the day after a determination under section 87 has been given to both the owner and the adjoining owner to lodge an appeal against the determination with the BAB.

Requiring protection work after works have commenced

There may be situations where damage to adjoining property is not foreseen when the building permit is issued, but circumstances change making protection work necessary. This can occur when there are unexpected site conditions or where the builder does not comply with the building permit.

If the adjoining owner is concerned about damage to their property they should contact the RBS or the MBS (particularly if emergency protection work may be necessary). Contact details for the RBS are provided on a Form 6 determination, a Form 7 notice and are required to be displayed on the allotment for the duration of the building work (regulation 41(2)). In these cases, the RBS should inspect the site without delay and determine whether protection work is required. The RBS may need to issue a direction to fix (Part 4), or stop the building work from proceeding and/or require work to make the site or adjoining property safe (Part 8).

A building order to stop building work can be issued by the RBS where the building work contravenes the Act or Regulations, or is a danger to life, safety or health of a person, or affects the support of an adjoining property (section 112).

A building order to stop building work is not appropriate where the owner has failed to comply with administrative provisions contained in sections 93 to 100.

If the RBS issues a building order to stop building work, they may exempt any part of the work from the building order if it is in the interests of safety or security of the building; the public; or to prevent a nuisance (section 112(6)). If an exemption is given under section 112(6), this can allow urgent work to be carried out. However, the RBS should only require works necessary to make the site and any adjoining property safe and stable. The RBS should then promptly make a determination that protection work is required, using Form 6, so that the protection work process can be followed.

The RBS must inform the MBS immediately if they consider that the condition of the site presents an emergency. Upon being notified, the MBS or their delegate will inspect the site, immediately assess the situation, and determine if an emergency order should be made, or other action should be taken.

Entry on adjoining property

Section 95 provides the owner or an agent of the owner with the ability to enter the adjoining owner's property to carry out a survey and any required protection work. Before entry, the adjoining owner must be given 24 hours notice, unless another time frame is agreed by the parties. Entry on the adjoining property for this purpose is available between the hours of 8am and 6pm.

The right of entry to carry out protection work does not apply to entry for any other purpose, such as carrying out of building work. Entry for that purpose will require agreement between the builder and adjoining owner.

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Resolution of disputes relating to protection work

A dispute between the owner and the adjoining owner relating to protection work may be referred to the BAB under Part 10 of the Act. The RBS must not act as an arbiter where there is disagreement between the owner and an adjoining owner.

The owner or adjoining owner may refer the matter to the BAB if they do not agree about—

- how or when emergency protection work required by declaration under section 89(1) is to be carried out (section 151);
- the nature of cover to be provided under a proposed contract of insurance under section 93 of the Act, or about the amount to be insured under the contract (section 152);
- how or when a survey of the adjoining property is to be carried out under section 94, or about the adequacy of the survey (section 153);
- the costs and expenses necessarily incurred by the adjoining owner in supervising protection work under Part 7 of the Act (section 154);
- any other matter under Part 7 of the Act, where the BAB does not have jurisdiction to deal with the matter under any other provision of Part 7 (section 155).

An adjoining owner may also apply to the BAB under section 159 for an order determining the amount of compensation for inconvenience, loss or damage suffered during the carrying out of protection work under Part 7 of the Act.

The application process, application form, fee, hearing procedure and other details relating to referral of a dispute, or an application for a compensation order to the BAB, are set out on the BAB website at www.buildingappeals.vic.gov.au.

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Version History

- Version 2.0, published 28 June 2021, supersedes Protection Work Approved Statement v1.0

Contact Us

If you have a technical enquiry, please email technicalenquiry@vba.vic.gov.au or call 1300 815 127.

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