

What you need to know about

Protection of adjoining property



Why protect adjoining property?

Building work can sometimes adversely affect adjoining properties. An owner who is proposing building work has obligations under the Building Act 1993 (the Act) to protect adjoining property from potential damage from their work.

If building work is close to or adjacent to adjoining property boundaries, then an owner may be required to carry out protection work in respect of that adjoining property. This is to ensure that the adjoining property is not affected or damaged by the proposed building work.

The Act defines adjoining property as:

Adjoining property means 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 occur as to be at risk of significant damage from the building work.

What is protection Work?

Protection work provides protection to adjoining property from damage due to building work. It includes but is not limited to:

- Underpinning of adjoining property footings, including vertical support, lateral support, protection against variation in earth pressures, ground anchors, and other means of support for the adjoining property.
- Shoring up of the adjoining property.
- Overhead protection for adjoining property.
- Other work designed to maintain the stability of adjoining property from damage from building work.

Under the *Building Act 1993* the responsibility for determining whether protection work is required rests with the relevant building surveyor.

How do you know if protection work is required?

When making an application for a building permit for the proposed building work, the applicant (the building owner or agent of owner) is required to provide detailed information about the building work to the relevant building surveyor. The relevant building surveyor will then determine if protection work is required.

What obligations does a property owner have if protection work is required?

Serve Protection Work Notice on adjoining owner

Owners who are required to carry out protection work in respect of an adjoining property must serve a notice on the adjoining owner and provide details about the proposed protection work. Building work must not be undertaken until the adjoining owner agrees to the protection work or the relevant building surveyor has made a determination on the protection work.

- The adjoining owner must respond to the notice no later than 14 days after the notice has been served. They can agree or disagree to the proposed protection work or require further information to be provided.
- An adjoining owner who fails to respond to the notice within the required time is deemed to have agreed to the proposed protection work.
- If the adjoining owner agrees or is deemed to have agreed to the proposed protection work, the owner may proceed to carry out the protection work after obtaining any necessary permits or approvals.
- In the event where the adjoining owner disagrees with the proposed protection work or requests further information, the relevant building surveyor must examine the proposal for protection work and determine whether the building work is appropriate. The relevant building surveyor must give the owner and adjoining owner notice in writing of the determination. A property owner or the adjoining owner may appeal within 14 days to the Building Appeals Board against the determination.



Obtain contract of insurance

The owner of the property where the building work is to be carried out must ensure that a contract of insurance is in force against potential damage caused by the proposed protection work to the adjoining property.

The insurance policy must protect the adjoining property, occupiers and the general public during the works and for a period of 12 months following completion of the work. A standard Construction and Public Liability policy will not normally provide the minimum cover required. It is strongly advisable to check with your preferred insurer.

The contract for insurance must be with an insurer for an amount agreed between the owner and adjoining owner. A copy of the insurance policy must be provided to the adjoining owner before building work commences.

Prepare a survey of adjoining property

A full and adequate survey of the adjoining property must be prepared by the owner with the adjoining owner. The survey must be a record of all existing cracks and defects.

This record must be signed or acknowledged as an agreed record of the condition of the adjoining property before the commencement of any protection work.

Disputes about insurance cover or the adequacy of the survey can be referred to the Building Appeals Board for a resolution.

Pay expenses incurred

A property owner is required by law to pay expenses necessarily incurred by the adjoining owner in protecting their interests. These costs include specialists' fees to check protection work documentation and expenses relating to the actual supervision of protection work following commencement on-site.

What obligations and rights does an adjoining owner have?

The Act sets out clearly the rights and responsibilities of the adjoining property owner and/or occupier throughout the process, including response to notices, absent owners, appointment of agents, entry to properties, out of pocket expenses, compensation and liability. Their obligations and rights include the following:

- Once a Protection Work Notice has been served, the adjoining owner must respond within 14 days of the notice being served
- The adjoining owner can agree or disagree to the proposed protection work or require further information to be provided
- An adjoining owner who fails to respond to the notice within the required time is deemed to have agreed to the proposed protection work
- The adjoining owner must assist the property owner prepare a full and adequate survey of their property before the commencement of the protection work
- The adjoining owner has the right to seek reimbursement from the property owner for any reasonable expenses incurred while protecting their interests.

The relevant building surveyor may be able to offer some guidance to specific obligations but cannot act as an arbiter between owners and adjoining owners.

What if a dispute occurs?

Disputes about any aspect of protection work legislation can be referred to the Building Appeals Board for a resolution. Any other matter not within the jurisdiction of the Building Appeals Board can be pursued through the court system but this is usually very costly and time consuming. The Building Appeals Board can be contacted on 9285 6400.

Need more information?

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