

## **PROTECTION WORKS NOTICES**

### **(Building Act Section 87 – 101)**

#### **SUMMARY OF BUILDING ACT REQUIREMENTS AND PROCESS FOR SERVING OF NOTICES**

1. Serve 1 copy of a properly completed and signed Form 3 ‘Protection Works Notice’ and 3 copies of a Form 4 ‘Protection Works Response Notice’ on the affected adjoining owner together with copies of the following:
  - 1 copy of relevant architectural drawings of the project;
  - 1 copy of relevant structural and civil drawings of the project;
  - 1 copy of engineer’s Certificate of Compliance - Design;
  - 1 copy of geotechnical (soil) investigation report (if relevant);
  - a detailed description of the proposed protection works including nature, duration, type and method of proposed protection).
2. Serve the above documentation either by hand (i.e. in person) or by registered mail and request confirmation of receipt from the Australia Post. This is important because section 85 of the Building Act gives the adjoining owner 14 days to respond otherwise consent to the proposed protection works is deemed to be granted. Serving of the notices in person is recommended;
3. Obtain a site specific contract of ‘protection work’ insurance in accordance with section 93 of the Building Act. The insurance must be for an amount agreed to with the adjoining owner or in the event of a dispute for an amount determined by the Building Appeals Board. A copy of the contract of insurance must be served on the adjoining owner and extended as often as necessary for not less than 12 months after completion of the works;
4. Undertake a survey (dilapidation report) of the adjoining property together with the adjoining owner (or an agent of the adjoining owner) recording all existing defects and taking photographs as necessary to confirm the condition of the adjoining property prior to commencement of the works. Give a copy of the survey to the adjoining owner;

**Other Comments:****Bldg Act Sec. 85**

If the adjoining owner requests further information after receiving the protection works notice, such information, if reasonably required to determine the adequacy of protection works, should be provided by the applicant.

**Bldg Act Sec 87**

If the adjoining owner disagrees to the proposed protection works, the relevant building surveyor must make a determination and give either party a period of 14 days to appeal his/her decision.

**Bldg Act Sec. 90 & 91**

If the adjoining owner is absent or cannot be located, the applicant may apply to the Minister, in writing, for the appointment of a suitable person to act as the agent of the adjoining owner.

**Bldg Act Bldg Act Sec. 92**

The relevant building surveyor must make available to the adjoining owner, without charge, any plans, specifications and reports relating to the proposed works.

**Bldg Act Sec. 95**

The applicant must give the adjoining owner not less than 24 hours notice prior to entering onto his/her property for the carrying out of the survey. The adjoining owner must not obstruct or refuse to admit the applicant onto his property for the purposes of carrying out the survey (penalties apply).

**Bldg Act Sec. 97**

The applicant must pay to the adjoining owner all costs and expenses necessarily incurred by the adjoining owner in assessing proposed protection work and supervising the carrying out of the work (this may include engineer's, legal personnel, architect's, building surveyor's and the like). The amount of expenses must be agreed to between the parties or otherwise determined by the Building Appeals Board.

**Bldg Act Sec. 98**

The applicant must compensate the adjoining owner for inconvenience, loss or damage suffered in connection with the carrying out of the protection work.

**Bldg Act Sec. 101**

Not later than 2 months after completion of the protection works, the applicant must serve on the adjoining owner and the relevant building surveyor a complete set of plans, drawings and specifications showing the actual protection work which has been carried out in respect of the adjoining property.

***This information is provided as a summary of the Building Act requirements and is not intended to replace the legislative requirements. For complete information regarding protection works legislation please refer to section 87 – 101 of the Building Act and Part 602 of the Building Interim Regulations 2017.***