

Everything you need to know about... *Protection of Adjoining Properties*

Part 7 of the **Building Act 1993**, covers the requirements of owners, builders, adjoining owners and building surveyors, in relation to building works that may affect the adjoining property owner.

If building work is close to or up 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 by the proposed building work.

Who determines if property protection work is necessary?

The Relevant Building Surveyor will determine if Property Protection Works are necessary, and the Act requires the owner to fulfil a wide range of conditions prior to commencement of the works.

What mandatory conditions does the Act require?

When the Building Surveyor deems that Property Protection Works are required the owner must:

A. Serve the relevant adjoining owners and Building Surveyor notice of the proposed building works on the prescribed form (Form 3), prior to commencement.

B. Not undertake the works until the adjoining owner has agreed to the protection works.

C. Enter into a contract of insurance that protects the adjoining property, occupiers and members of the public during the works, and for a period of 12 months after completion.

Penalty for non compliance \$50,000 for a natural person & \$250,000 for a body corporate - refer s93(1) of Building Act.

The insurance referred to above must be with an insurer, and for an amount agreed between the owner and adjoining owner, and a copy of such insurance must be provided to the adjoining owner prior to commencement.

D. Make a full and adequate survey of the adjoining property, together with the adjoining owner (or agent), and make a record of all existing cracks and defects in the property.

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

What rights do the adjoining owners have in the process?

The Building Act sets out clearly the rights and responsibilities of the adjoining property owners and/or occupiers throughout the process, including response to notices, absent owners, appointment of agents, entry to properties, out of pocket expenses, compensation and liability.

All questions on specific issues should be directed to the Relevant Building Surveyor.

Does a normal Construction & Public Liability Policy comply with the property protection requirements?

A standard Construction & Public Liability policy will not normally provide the minimum cover required under s93 of the Building Act 1993, as most policies of this type expire upon the issue of the Occupancy Permit, Occupation or Completion of the Works ... whichever is the earlier, and will not extend to cover the mandatory 12 month 'run off' period.

It is strongly advisable to check with your preferred Insurer.

Can the Builder take out the insurance on the Owners behalf?

The Act states that the owner must obtain the required insurance, but it seems reasonable that where a Builder is being contracted to undertake the work as an authorised agent of the owner, that the builders Public Liability policy be endorsed to comply with the requirements of the Act.

A builders standard policy wording may not cover the requirements of Part 7 of the Act, as most builders are on an 'annual' type policy, which may not contain provisions for 'agreed values' for adjoining properties, may not include cover for the statutory 12 month 'run off' period and may include 'exclusions' that conflict with the requirements of the Act, but it should be possible for the Builder to obtain a job specific endorsement to his policy to demonstrate compliance.

Other Consumer Advice Sheets in this series

- Construction & Public Liability Insurance
- Risk & Cost Reduction Strategies During Construction
- Selling a Domestic Owner Built Property

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