

Protection Works: Do you know your rights?

Protection Works

Part 7 of the Act

Protection works is needed prior to carrying out works on your property boundary, to protect your neighbour's property (for example you are building a garage or retaining wall on the boundary).

Form 6 - Determination that protection work is required [s88]

The RBS assesses a building permit application and considers whether protection work for an adjoining neighbour is required (Regulation 112).
Within 7 days of the RBS determining protection work is required, the RBS must provide the Form 6 to the Owner (Regulation 111).

Form 7 - Protection Works Notice [s84]

Owner serves Protection Works Notice on adjoining neighbour (Regulation 113) (proper service is required, s236).
This Form 7 should NOT be prepared by the RBS, as the RBS should remain independent.
The Owner must attach 3 copies of the Form 8 Notice; the VBA statement (as approved by Regulation 113(1)); plans & specifications.

Form 8 - Protection Works Response [s85]

The adjoining neighbour must provide the Owner with the Protection Works Response within 14 days (Regulation 114).

Yes
[s85(1)(a)]

RBS may issue building permit after other necessary approvals are obtained.

No
[s85(1)(b)(i)]

RBS must examine the proposal and determine whether it is appropriate [s87].

No Response Received
[s85(2)]

The Protection Works are deemed to be accepted.

Request further information
[s85(1)(b)(ii)]

Plans, drawing & specifications must be available for no charge [s92].

Form 9 - Notice of Determination [s87]

The determination by the RBS must be set out in Form 9.
The RBS must ensure proper service of the Form 9 on both the Owner and the adjoining neighbour.
The Owner or adjoining neighbour have 14 days from the date of receipt to dispute the Notice (see Dispute below).

Survey of adjoining property [s94] (also known as a dilapidation report)

This is prepared by the Owner or their agent.
Record all existing damage to the adjoining property. You should ensure the dilapidation report has lots of photographs showing any existing damage (and measurements of that damage).
The dilapidation report does not need to note the cause of the damage, just what damage exists prior to the protection works commencing.
The Report must be signed or acknowledged by both parties as to the condition of the adjoining property before the protection works can commence.
Adjoining neighbour must provide access to Owner or Owner's agent [s95].

Protection Works Insurance [s93]

Insurance of the protection works must be provided to the neighbour before works commence.
Must protect the adjoining neighbour and public (during the works and for further 12-month period following completion).
Should recognise the interests of the adjoining neighbour.

Reimbursement of expenses and compensation [s97 & 98]

Where adjoining neighbour incurs costs/expenses to assess the proposed protection works, they must be reimbursed by the Owner.

Dispute [Part 10]

The Building Appeals Board may resolve disputes between the parties in relation to the above steps, for example a dispute about insurance [s152]; Dilapidation Report [s153] or costs [s154].