

## INTRODUCTION

1. This practice note provides guidance in respect of:
  - (a) claims by an adjoining owner seeking to recover their costs and expenses in assessing proposed protection work (see sections 97 and 155 of the *Building Act 1993* (**the Act**)); and
  - (b) claims by an adjoining owner seeking to recover their costs and expenses of supervising protection work (see sections 97 and 154 of the Act).
2. This practice note should be read in conjunction with [Practice Note 8A – Disputes and Compensation proceedings in respect of Part 7 of the Act \(Protection Work\)](#) and [Practice Note 8B \(2021\) – Appeal proceedings in respect of Decisions made under Part 7 of the Act \(Protection Work\)](#). Practice Note 8A and 8B provide further information on how to commence an application with the Board. Further information on applying can also be found on the Board website - <https://www.buildingappeals.vic.gov.au/how-to-commence-a-proceeding>.
3. In any dispute proceeding, having regard to the rules of natural justice, the Board may at its discretion vary the operation of this practice note by direction or order.
4. This practice note has been approved by the Chairperson of the Board.

## DEFINITIONS

| Word                                      | Definition                                                                                                                                                                                                  |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Act</b>                                | <i>Building Act 1993</i>                                                                                                                                                                                    |
| <b>Regulations</b>                        | <i>Building Regulations 2018</i>                                                                                                                                                                            |
| <b>Board</b>                              | Building Appeals Board                                                                                                                                                                                      |
| <b>Owner</b>                              | The owner of the building site.                                                                                                                                                                             |
| <b>Adjoining owner</b>                    | The owner of the adjoining property, 'which is so situated in relation to the site on which building work is to be carried out as to be at risk of significant damage from the building work.' <sup>1</sup> |
| <b>Dispute proceeding</b>                 | A proceeding consisting of a dispute or disputes arising under Part 7 of the Act that is or are referred to the Board.                                                                                      |
| <b>Applicant</b>                          | The owner or adjoining owner who refers a dispute.                                                                                                                                                          |
| <b>Respondent in a dispute proceeding</b> | The owner or adjoining owner with whom the Applicant cannot agree in relation to a matter arising under Part 7 of the Act.                                                                                  |
| <b>Directions</b>                         | Orders of the Board made as to the future conduct of the proceeding.                                                                                                                                        |
| <b>Expert Witness</b>                     | A person who has specialised knowledge based on the person's training, study and/or experience.                                                                                                             |
| <b>Protection Work Costs</b>              | The costs and expenses necessarily incurred by an adjoining owner in assessing proposed protection work and in supervising the carrying out of protection work in respect of the adjoining property.        |
| <b>RBS</b>                                | Relevant building surveyor                                                                                                                                                                                  |

<sup>1</sup> *Building Act 1993*, s 3(1).  
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## LEGISLATION – WHICH SECTION APPLIES?

5. Section 97 of the *Building Act 1993* (**the Act**) provides that an adjoining owner is entitled to be reimbursed for the costs and expenses necessarily incurred by them in assessing proposed protection work and in supervising the carrying out of protection work.
6. However, disputes over protection work costs must be referred to the Board under the correct section of the Act. Sections 154 and 155 of the Act are the relevant sections of the Act which empower the Board to determine a dispute concerning protection work costs:
  - (a) if the dispute relates to costs and expenses necessarily incurred in **assessing proposed** protection work, the dispute should be referred under s **155** of the Act; and/or
  - (b) if the dispute relates to the costs and expenses necessarily incurred in **supervising** the carrying out of protection work, the dispute should be referred under s **154** of the Act.

## WHAT DOES ‘NECESSARILY’ AND ‘INCURRED’ MEAN?

7. What is regarded as ‘necessarily incurred’, will depend on the individual circumstances of each case. The Board will listen to evidence or read written material in order to decide whether the protection work costs were necessarily incurred.
8. Whilst the Board is not bound by prior determinations, prior determinations of the Board can provide some guidance and many may be found on [Austlii](#).

## MEDIATION

9. Parties are encouraged to enter into discussions in an attempt to resolve the dispute. Sometimes, the Board may order that the parties participate in a mediation facilitated by a Board member in order to try to negotiate a settlement of the dispute.

## EVIDENCE

10. When making a claim for costs of assessing proposed protection work or supervising protection work you must provide evidence of the costs incurred.
11. Any quotations or invoices should itemise each cost claimed including:
  - (a) Details for assessing proposed protection work and/or supervising the protection work;
  - (b) How the amount claimed was calculated or derived. This should address how any hourly work or billing rate was applied to assessing/supervising the protection work in detail;
  - (c) The reason why (for what purpose) the costs were necessarily incurred; and
  - (d) Identify any material in support of the amount claimed, such as emails or reports.
12. A lump sum invoice that simply states fees from 1 January 2022 – 1 February 2022 for \$x will not assist the Board in making a determination as there may not be enough detail to determine whether that cost related to the cost being claimed and that it was necessarily incurred in assessing proposed protection work or in supervising protection work.
13. Legal costs of or incidental to the Board proceeding or hearing may not be protection work costs, even though the subject matter of the Board proceeding or hearing related to a dispute concerning protection work costs. For this category of costs regard should be had to [Practice Note 9A – costs of the proceeding](#) which can be downloaded from the Board’s website.