

The following information is provided to assist you with completing and submitting a Report & Consent Application to Council for a request to vary this Building Regulation.

EXTRACT OF REGULATION

130 Report and consent for building over easements

- (1) The report and consent of the relevant service authority must be obtained to an application for a building permit to construct a building over an easement vested in that service authority.
- (2) This regulation does not apply to implied easements under the Subdivision Act 1988.

Notes

- 1 Section 148 of the **Water Act 1989** prohibits a person from building a structure, or placing any filling on land without the consent of the Melbourne Water Corporation or other water supply authority—
 - over which an easement exists either in favour of a water supply authority, or for water supply, sewerage or drainage purposes; or
 - within 5 m laterally of any works of the Melbourne Water Corporation; or
 - within 1 m laterally of any works of any other water supply authority.
- 2 Section 148 of the **Water Act 1989** also prohibits the removal of any soil, rock or other matter that supports, protects or covers any works of the Melbourne Water Corporation or water supply authority.

REGULATION OBJECTIVE

To ensure clear access for any repairs or future works within an easement, no buildings can encroach an easement without the relevant authority's permission. Any easements located on a property will be shown on the title, including details of any service authorities with an interest in the easement.

DECISION GUIDELINES

The following information should be outlined on your submission form as part of your application:

- Why do you wish to locate the proposed works over the easement
- Are there any restrictions that prevent you from siting the works off the easement
- Have you considered any alternative solutions to remove or reduce the proposed works from the easement

ASSESSMENT CRITERIA

A referral will be sent to Councils Infrastructure Department for their advice on your proposal. The following criteria will be used for their assessment:

- Ability to comply with the regulation
- Access requirements to Easement
- Proposed works
- Type of encroachment

Where consent is given to construct over an easement the following conditions are applicable:

- To permit the Council, its agents or contractors to enter into and upon the building or other structure and/or the easement for the purpose of inspecting, constructing, maintaining or repairing any drain or other works now laid or which may be hereinafter laid by Council, and if necessary for that purpose, to excavate through the floor of said building.
- To be solely responsible for any injury, loss or damage which may be occasioned to the improvements by reason of, or incidental to, the performance of the works in, over or on the easement and at all times to indemnify the Council against all causes of action, suits, costs, claims and demands whatsoever arising out of or incidental to the works in, over, on or appurtenant to the easement.
- To indemnify the Council against all actions, claims, suits and demands arising out of, or incidental to, the erection and/or retention of the said building over the said drain or other works and/or the said easement.
- To pay to Council any additional costs incurred by it in inspecting, constructing, maintaining or repairing the said drain or other works of the Council by reason of the said building having been erected over such drain or other works and/or the said easement.
- Not to sell or mortgage land in which this consent refers without first disclosing the contents of this consent (including these conditions) to the purchaser or mortgagee.

Please note other conditions may be placed on the Report & Consent based on the assessment of your application.

NOTES:

WHAT IS A REPORT & CONSENT?

As set out in the **Building Act 1993** (the Act) and the Building Regulations 2018 (the Regulations), a report and consent is the process for consulting with and obtaining the approval of a reporting authority when building work may affect assets, infrastructure or amenity of the community. These include:

- Siting of a dwelling
- Building over an easement
- Building in a flood-prone area
- Fire safety matters
- Electricity sub-stations (only a report)
- Projections beyond street alignment
- Building above or below public facilities
- Precautions over street alignment (unclear)
- Installing or altering a septic tank system.

WHEN IS A REPORT & CONSENT REQUIRED?

The Act and Regulations provide specific circumstances where a report and consent of reporting authorities is required. Division 3 of Part 4 of the Regulations prescribes the reporting authorities and the matters to be reported on. Regulation 31 refers to Schedule 5 Part 2 which lists the matters that each authority reports on. These regulations are listed on the application form.

DO I NEED A REPORT & CONSENT IF I HAVE A PLANNING PERMIT?

Where a Planning Application has been assessed for siting, the Planning Scheme overrides the requirement to obtain a Report & Consent. The relevant Regulation will note if this is applicable. Please note not all Planning Permits will assess the siting as this depends on what triggered the need for the Permit. Where a Planning Permit has been issued and siting was not assessed the Siting Regulations must be complied with or a Report & Consent obtained.

CONSENTING TO AN APPLICATION

A reporting authority may consent to an application as presented or place recommendations on the consent. When placing recommendations on a report and consent the prescribed reporting authority should consider the relevance to the matter being sought the recommendation and whether the RBS can reasonably enforce the recommendation.

The Report & Consent is valid for 12 months after the date of issue. If works have not commenced within this time, Report & Consent must be reapplied for. Where works have commenced within the 12 months, the Report & Consent remains valid for those works

REFUSAL OF AN APPLICATION

A reporting authority must provide reasons for refusing an application. When a report and consent is refused, an applicant has the right to appeal the reporting authority's decision to the Building Appeals Board (BAB).

Section 144 of the Act allows an appeal to be made against a reporting authorities:

- refusal to consent to an application
- conditions imposed
- failure within a reasonable time to decide an application.

Appeals must be made within 30 days of the date the refusal was issued. An appeal can be lodged with the BAB. An application form and supporting information is to be lodged with the relevant fee. A copy of the application form can be downloaded from the Victorian Building Authority website www.vba.vic.gov.au or contact the BAB on (03) 9285 6400.

REPORT & CONSENT PROCESS

