

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

73 Maximum street setback

- (1) A Class 1 building when first constructed must not be set back from the front street alignment more than one-third of the depth of the allotment unless the allotment is equal to or greater than 0.40469 ha.
- (2) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.
- (3) For the purposes of subregulation (1), if a building is on a battleaxe allotment—
 - (a) a reference to the allotment is taken not to include a driveway that forms part of the battleaxe allotment; and
 - (b) a reference to the front street alignment is taken to be a reference to the common boundary between the battleaxe allotment and the front allotment (excluding the common boundary between any driveway that forms part of the battleaxe allotment and the front allotment).
- (4) In this regulation—

battleaxe allotment means—

 - (a) an allotment situated behind another allotment that has a street frontage; and
 - (b) the allotment has access to the street through a driveway, whether or not the driveway forms part of the allotment;

driveway includes any land related and contiguous to the driveway;

front allotment means an **allotment** that has a street frontage and that is situated in front of a battleaxe allotment

REGULATION OBJECTIVE

To facilitate consistent streetscapes by discouraging the siting of single dwellings at the rear of lots.

REGULATION NOTES

The reference in this regulation to .40469 ha is the equivalent of 1 acre or 4046.9m². As the regulation only applies to a new Class 1 building, an extension to an existing dwelling already exceeding the maximum setback is allowable. The geometry of some allotments may mean a consent and report is required for the siting of the building.

DECISION GUIDELINES

The reporting authority may give its consent where a single dwelling, other than a fence, does not comply with regulation 73 of the Building Regulations 2018, if:

- (a) the setback will be more appropriate taking into account the prevailing setbacks of existing buildings on nearby allotments; or
- (b) the siting of the building is constrained by the shape and or dimensions of the allotment; or
- (c) the siting of the building is constrained by the slope of the allotment or other conditions on the allotment; or
- (d) there is a need to increase the setback to maximise solar access to habitable room windows and or private open space; or
- (e) the setback will be more appropriate taking into account the desire or need to retain vegetation on the allotment; and
- (f) the setback is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the **Planning and Environment Act 1987**; and
- (g) the setback will not result in a disruption of the streetscape; and
- (h) the setback is consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme

Your submission should outline how the proposed works meets the above guidelines. The proposal must meet at least one 'or' statement (not all will be applicable) and all 'and' statements.

Please note meeting these guidelines does not guarantee the Report & Consent will be approved.

ASSESSMENT CRITERIA

The following criteria will be used for the assessment of your application:

- Adjoining Owners comments
- Ability to comply with the Regulation
- How the proposal meets the Decision Guidelines

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

