

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

#### 74 Minimum street setbacks

- (1) If—
- (a) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) a schedule to that zone specifies a setback from a street alignment—
- a building on that allotment must be set back from a street alignment not less than the relevant setback specified for the street alignment in the schedule.
- (2) If subregulation (1) does not apply, a building must be set back from a street alignment not less than the distance specified in respect of that alignment in Table 74.

**Table 74—Street setbacks**

<i>Adjoining development context</i>	<i>Minimum setback from front street alignment</i>	<i>Minimum setback from side street alignment</i>
Existing dwellings on adjoining allotments facing the same street	The average distance of the setbacks of the front walls of the existing buildings on the adjoining allotments facing the front street, or 9 m, whichever is the lesser	Not applicable
Existing dwelling on one adjoining allotment facing the same street and no building on the other adjoining allotment facing the same street	The same distance as the setback of the front wall of the existing building on the adjoining allotment facing the same street, or 9 m, whichever is the lesser	Not applicable
No existing dwellings on adjoining allotments facing the same street	6 m for a building facing a declared road 4 m for a building facing any other street	Not applicable
<u>Corner allotment</u> If there is a building on the adjoining allotment facing the same street	The same distance as the setback of the front wall of the existing building on the adjoining allotment facing the front street, or 9 m, whichever is the lesser	The same distance as the setback of the front wall of the existing building on the adjoining allotment facing the side street or 2 m, whichever is the lesser
<u>Corner allotment</u> If there is no building on the adjoining allotment facing the same street	6 m for a building facing a declared road 4 m for a building facing any other street	2 m

- (3) The following may encroach into the setback distance required by subregulation (1) or (2) by not more than 2.5 m—
- (a) porches, verandahs and pergolas that have a maximum height of less than 3.6 m above natural ground level;
  - (b) eaves, fascia and gutters;
  - (c) sunblinds and shade sails;
  - (d) permanent and fixed screens referred to in regulation 84(5)(d) or 84(6);
  - (e) decks, steps or landings less than 800 mm in height.
- (4) 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.
- (5) In this regulation **street** does not include lane, footway, alley or right of way.
- (6) For the purposes of this regulation, an allotment does not adjoin another allotment if its boundary only touches the boundary of the other allotment at one point (for example, at a corner).

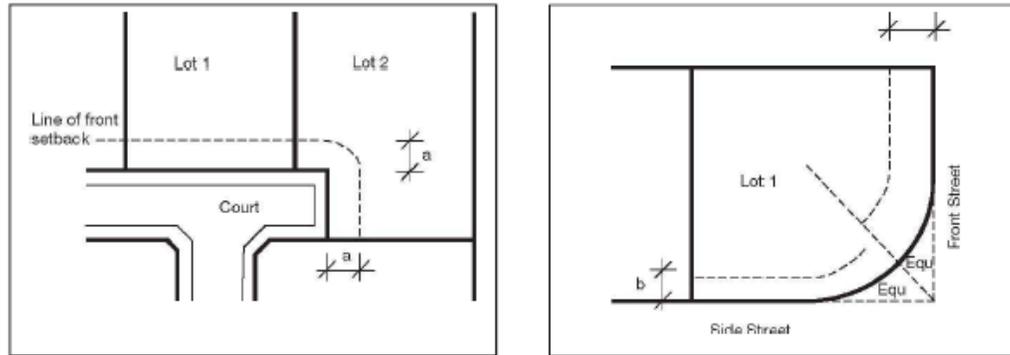
### REGULATION OBJECTIVE

The purpose of this regulation is to respect a street's character and make efficient use of the site by relating setbacks to the context of setbacks on adjoining properties.

## REGULATION NOTES

The purpose of this regulation is to respect a street's character and make efficient use of the site by relating setbacks to the context of setbacks on adjoining properties.

**Regulation 74(2) Table 74** - Front and side street setbacks relate to the context of the adjoining allotment. The regulation applies to alterations and additions in addition to the construction of a new building. The term 'facing' means oriented towards that street, that is, the plane of the wall is less than  $90^\circ$  to the street alignment. If the wall is not parallel to the street alignment, the closest part of the wall to the street alignment is the point at which the setback is measured. The term 'front street' is determined in the context of the subject allotment and the proposed dwelling. The term 'front wall' refers to the wall that presents as the 'architectural frontage'. There are no prescribed setbacks for rear streets however regulation 79, Side and Rear Setbacks will apply. The following diagrams illustrate methods of measuring front and side street setbacks in some situations.



**PLAN VIEW** a. = line of minimum front street setback b. = line of minimum side street setback

Column two of Table 74 refers to 'front walls of existing buildings' on adjoining allotments being used to determine the average distance of a minimum setback. Carports are open structures and do not have a 'front wall'. Carports are not to be used to determine the average distance of a setback for the proposed building whilst garages may be.

**Regulation 74(3)(a)** - This regulation allows encroachments of porch and verandas of a height of less than 3.6m to encroach 2.5m into the required setback. Any associated steps, ramps or landings that form part of the porch or veranda must also be within the 2.5m encroachment distance allowed.

**Regulation 74(2)** - Declared roads are usually main arterial roads. Information regarding roads 'declared' within the meaning of the Transport Act 1983 can be obtained from the relevant council or VicRoads. Declared roads are generally maintained by VicRoads, whilst a non-declared road or 'any other street' is usually maintained by the relevant council. The VicRoads country roadmap identifies declared roads in rural areas.

## DECISION GUIDELINES

The reporting authority may give its consent where a single dwelling, other than a fence, does not comply with regulation 74 of the Building Regulations 2018, if –

- the setback will be more appropriate taking into account the prevailing setback within the street; or
- the setback will be more appropriate taking into account the preferred character of the area, where it has been identified in the relevant planning scheme; or
- the siting of the building is constrained by the shape and or dimensions of the allotment; or
- the siting of the building is constrained by the slope of the allotment or other conditions on the allotment; or
- there is a need to decrease the setback to maximise solar access to habitable room windows and or private open space; or
- the setback will be more appropriate taking into account the desire or need to retain vegetation on the allotment; and
- 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
- the setback will not result in a disruption of the streetscape; and
- 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](http://www.vba.vic.gov.au) or contact the BAB on (03) 9285 6400.

## REPORT & CONSENT PROCESS

