

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

83 Overshadowing of recreational private open space

- (1) A building must not reduce the sunlight to a recreational private open space of an existing dwelling on an adjoining allotment to the extent that less than the required minimum area of the recreational private open space has less than 5 hours of sunlight between 9 a.m. and 3 p.m. on 22 September.
- (2) If a building is to be constructed on an allotment and the existing amount of sunlight to a recreational private open space on an adjoining allotment is less than the amount required under subregulation (1), the amount of sunlight to that area must not be further reduced by the construction of the building.
- (3) 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.
- (4) In this regulation the **required minimum area** of a recreational private open space is the lesser of—
 - (a) 75% of the recreational private open space; and
 - (b) 40 m² with a minimum dimension of 3 m.

REGULATION OBJECTIVE

The purpose of this regulation is to provide protection of existing RPOS on adjoining allotments from overshadowing by a new dwelling or extension to a dwelling.

REGULATION NOTES

It is not the role of the RBS to identify the RPOS and the area that achieves compliance. This is the responsibility of the applicant to the satisfaction of the RBS. However, it is the role of the RBS to determine the compliance of the proposed building work. Therefore, appropriate information must be provided in the application.

The definition of recreational private open space includes the term “primarily intended for outdoor recreation activities”. It is anticipated that in most instances the RPOS of the adjoining allotment will be the same area as the private open space as defined in regulation 5 except for those areas that are clearly not RPOS. These might include a dedicated clothesline area, bin storage/compost areas, service areas, narrow access ways providing access to service areas and any area within the front setback that is not screened or fenced in accordance with the definition of RPOS.

Other areas can be included in the calculation of the total area of RPOS if they are potentially available for use as RPOS and they cannot be excluded as having some other primarily non-recreational use. It is expected that the definition will be used principally to eliminate an area from being considered as being RPOS. For instance, a driveway used as a cricket pitch is not primarily intended for use as outdoor recreational activity. Its primary use is for vehicle access. Similarly, a narrow pathway to the service side of a house will primarily be intended to provide access to those services. As can be seen, the total area of RPOS may include a number of different areas.

For the purposes of the regulation, the minimum area to be protected is a single part of the total identified area of RPOS. The area required to be protected can be anywhere within that total area of RPOS but should be a single parcel of land.

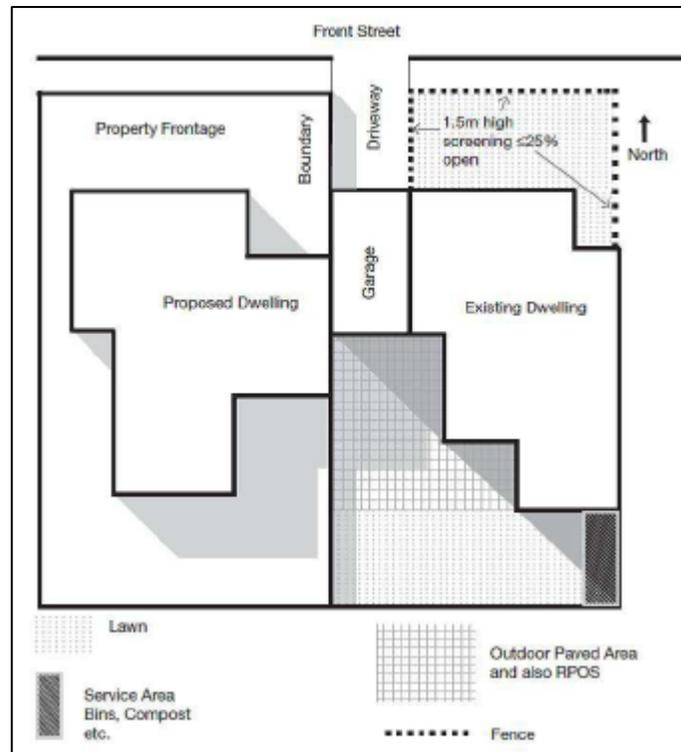
Regulation 83(1) - Because the regulation requires that a proposed building must not reduce the amount of sunlight to an RPOS to less than the minimum area required, consideration must also be given to shadows cast by existing buildings and other permanent structures.

Whilst the wording of the regulation does not specifically preclude the assessment of shadows cast by vegetation, there are issues such as how established the vegetation is, whether the vegetation is perennial or deciduous, and the ownership of the vegetation to be considered. It is strongly recommended that shadows cast by existing vegetation not be used to determine compliance.

The existence of shadows cast by vegetation is more appropriately used as a basis for an application for a consent and report. The area to be protected is not a fixed area on the ground and might be in differing locations during the course of the 5-hour period. The minimum area is defined in sub regulation (4) as the lesser of 40m² with a minimum dimension of 3m or 75% of the existing RPOS. This protected area should not be made up of a number of parcels of RPOS but should be a single area of RPOS.

Regulation 83(2) - This sub regulation requires no further reduction of sunlight to the RPOS if it is not already receiving the amount required under sub regulation (4).

The following diagram shows a shadow diagram at 2pm showing shadows of the proposed building, the existing building and fences



To determine the RPOS, deduct the areas that are not primarily intended for outdoor recreation activities from the area of private open space as defined in regulation 5. In this instance, the driveway and the service area would be eliminated. The remainder is then regarded as the area of RPOS. The diagram shows a paved outdoor dining area that is clearly RPOS but has been nearly completely overshadowed.

However, there are still two areas available for use as RPOS including the front yard which is screened, in accordance with the definition of RPOS under regulation 5, the paved courtyard and the rear lawn area. The proposal complies because there is still 40m² of RPOS available in either the remainder of the rear yard or in the fenced portion of the front yard. Either of these two areas achieves compliance.

DECISION GUIDELINES

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 83 of the Building Regulations 2018, if –

- the proposed building will not significantly impact on the amenity of the secluded private open space(s) on nearby allotments; and
- the building 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**.

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

