

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

96 Fences and overshadowing of recreational private open space

- (1) A fence more than 2 m in height 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 fence 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 fence.
- (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 NOTES

To ensure fences do not unreasonably overshadow existing secluded private open spaces.

DECISION GUIDELINES

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

- Why you cannot comply with the regulation
- Why you wish to construct the fence at the proposed height

ASSESSMENT CRITERIA

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

- Ability to comply with the Regulation
- Adjoining Owners comments
- Intended purpose of the proposed fence

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

