

Practice Note

2014-57

Issued June 2014

Report and Consent

This updates the previous Practice Note 2007-57 issued August 2007.

Reference to the BCA in this Practice Note means Volume One and Volume Two of the National Construction Code Series.

1. SUMMARY

This practice note is a guide for building practitioners on the report and consent process.

2. BACKGROUND

The requirement for a report and consent is based on the need to ensure that the assets and infrastructure of authorities, the operational requirements of emergency services and the amenity of the community are not compromised or adversely affected as a result of proposed building work.

3. WHAT IS REPORT AND CONSENT?

As set out in the Building Act 1993 (the Act) and the Building Regulations 2006 (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 dwelling¹
- building over an easement

¹ Part 4 of the Regulations

- 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
- installing or altering a septic tank system.

4. WHAT IS A REPORTING AUTHORITY?

The Act defines a reporting authority as “a body or person (other than a municipal building surveyor or private building surveyor to whom an application is made) that is required by the Act or the Regulations or by any other Act or regulations to report on or consent to an application for a permit”.

The Regulations also prescribe particular reporting authorities. Regulation 308 lists the chief officer, a council and an electricity supply authority as prescribed reporting authorities.

The Regulations also refer to a service authority as a reporting authority. Regulation 310 requires report and consent of a service authority for building work over an easement vested in that service authority.

A service authority means a:

- council
- drainage authority
- relevant electricity supply authority
- relevant gas supply authority
- sewerage authority
- water supply authority.

5. WHEN IS A REPORT AND CONSENT REQUIRED?

The Act and Regulations provide specific circumstances where a report and consent of reporting authorities is required.

Division 2 of Part 3 of the Regulations prescribes the reporting authorities and the matters to be reported on. Regulation 308 refers to schedule 4 which lists the matters that each authority reports on.

Regulation 309 requires the report and consent of the chief officer when a fire safety matter as listed in the Regulations does not meet the deemed to satisfy provisions of the BCA, for example a fire hose reel is designed to be installed at a distance greater than 4m from an exit.

Regulation 309 requires the report and consent of the chief officer when bushfire safety matters do not comply with the requirements of regulations 808 or 809, for example emergency services vehicles access the static water supply is 5m instead of the required 4m.

Regulation 310 requires the report and consent of a service authority to construct a building over an easement that is vested in the service authority. A service authority of the purpose of Regulation 310 can be a council, a drainage authority, an electricity supply authority, a gas supply authority, a sewerage authority and a water supply authority.

Regulation 311 identifies that the Relevant Building Surveyor (RBS) may require a report from the relevant electricity supply authority detailing whether a substation is necessary. This is only required for the construction of Class 2 - 9 buildings.

Part 4 of the Regulations requires that a report

and consent be obtained where a design for a single dwelling does not comply with a regulation. For example a minimum front setback of a property is required to be 6m whereas the design shows a minimum setback of 4m.

Regulation 801 requires a report and consent of the relevant council to be obtained to an application for a building permit if the proposed building work would require the installation or alteration of a septic tank system or the construction of a building over an existing septic tank system.

If a new septic tank system is to be installed or an existing septic tank system is to be altered this report and consent must be obtained. It is possible that the proposed building work may require alteration of an existing septic tank system due to the potential for increased flow into the system through plumbing fixtures being added or where there is an increase in the number of people able to be accommodated in the building.

The environmental health area of the municipal council should be contacted for advice as to whether there is such a requirement. An alteration to a septic tank system is a matter dealt with under the Environmental Protection Act 1970. If the council advise that there is a requirement for the septic tank system to be altered as a result of the proposed building work, the report and consent provisions of regulations 801 (1) and 1003 (2) are applicable.

A report and consent does not need to be obtained under regulation 801(1) if a permit for the relevant work on the septic tank system has already been issued under the Environment Protection Act 1970. Similarly, if a certificate approving the use of the system, following the carrying out of the relevant work on the system, has already been issued under the Environment

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Protection Act 1970, a report and consent does not need to be obtained under regulation 1003(2).

6. WHAT HAPPENS WHEN AN AMENDED BUILDING PERMIT REQUIRES A REPORT AND CONSENT?

Situations can arise where the design for the building work is varied during the construction process. When a design variation occurs an amended building permit is required in order to avoid an offence under section 16 of the Act for failing to carry out building work in accordance with the building permit.

(Note that if the building work has been carried out a valid building permit could not be issued as an application for a building permit and the resultant building permit cannot relate to building work that has been carried out.)

If aspects of the proposed design associated with the application and documents regarding the proposed amendment contain matters that would trigger the requirement for a report and consent of a reporting authority then those requirements must also be satisfied.

In the instance where building work has been carried out and it is found to not comply with the Regulations, the RBS will need to consider the non-compliance through the building notice process. A building permit and/or report and consent cannot be issued after the work is carried out. It is recommended that comments be sought from the relevant reporting authority by the RBS when addressing a non-complying issue under the building notice process.

7. PLANNING PERMITS - IS A REPORT AND CONSENT REQUIRED?

Refer to Practice Note 2014-02 for circumstances where report and consent is not

required due to the effect of a planning permit.

8. FEES ASSOCIATED WITH A REPORT AND CONSENT

Regulation 312 prescribes maximum fees payable per matter, for applications made under section 29A of the Act and Part 4, 5, 8 and 604 (4); and 610(2) of the Regulations.

There are no prescribed fees for applications made to service authorities. The Country Fire Authority (CFA) and The Metropolitan Fire and Emergency Services Board (MFESB) charge an hourly rate. For further information contact the relevant fire authority directly.

9. RELEVANT BUILDING SURVEYOR - ROLE AND RESPONSIBILITIES

The role and responsibility of the RBS in the report and consent process is important in the context of determining when to issue a building permit.

Schedule 2 of the Act prescribes the process the RBS must undertake when a report and consent is required. Importantly, the RBS must not issue a building permit unless satisfied that any consent of a reporting authority required is obtained as outlined in section 24(1)(b) of the Act.

The RBS must give a copy of an application to each reporting authority within the prescribed time after the application is received by the RBS.

The RBS must consider the report of a reporting authority before deciding the relevant application for a permit. The RBS may obtain the required report and consent or alternatively the applicant may obtain the required report and consent and forward a copy to the RBS.

The RBS should ensure that all documentation associated with the report and consent provided to the reporting authority is consistent with the building permit documentation.

9.1 Recommendations of a report and consent

Schedule 2 states that in deciding an application, the RBS must implement the recommendations of a prescribed reporting authority in relation to a prescribed matter.

However the RBS is not required to implement any of the recommendations in a report provided by a prescribed reporting authority in respect of non prescribed matters.

Section 23 of the Act requires that the RBS must notify the reporting authority including a prescribed reporting authority without delay if they issue a building permit which differs from or fails to implement the recommendations in a reporting authority's report. This notification must also include a copy of the building permit.

The RBS should also be aware that a prescribed reporting authority has a right of appeal under section 138 (5) of the Act, if the RBS fails to implement any recommendation in a report on the application for a permit. Where the RBS does not implement or varies any recommendation of a prescribed reporting authority, they should clearly document the decisions and the reasons behind them.

10. COUNCIL - ROLE AND RESPONSIBILITIES

Council's role and responsibilities in the report and consent process can include that of a decision maker or a mediator. The council should consider the needs of the applicant and the potential impact upon adjoining properties and/or infrastructure when making a decision.

When assessing an application for report and consent relating to a Part 4 of the Regulations

the council must have regard to Minister's Guideline MG/12.

Some applications require council to consult with other authorities i.e.: flooding areas pursuant to Regulation 802. It is not the role of the applicant to consult with these authorities. The consultation process is to be carried out by council during the report and consent process if required.

Schedule 3 of the Regulations specifies the time limits for reporting authorities to report on and consent to an application. Refer to Section 12 for further details.

10.1 Consultation with adjoining property owners

Schedule 2 of the Act requires the reporting authority to have regard to the Minister's guidelines. Minister's guidelines MG/03 states that a municipal council is to seek the views of the adjoining property owner when an application is lodged for a reduction in setback requirements of Part 4 of the Regulations.

It is recommended that the process of obtaining the adjoining owners comments is carried out by the council as identified in MG/03. In council obtaining the owners comments the process will be transparent and non bias to the outcome being sought.

In seeking an adjoining owner comments the council must be mindful of the time limits to be observed in considering an application. In notifying the adjoining owner of the application for a variation the council could also identify that there is a time limit on council's decision making and that comments are to be provided within this time frame.

11. CONSENT / REFUSAL OF AN APPLICATION

11.1 Consenting to an application

A reporting authority may consent to an application as presented or place recommendations on the consent. Refer to Section 9.1 for further details relating to recommendations. In some instances a reporting authority will list the related documents (plans) on the consent or stamp the plans/supporting documentation with a corresponding number to clarify exactly which documentation has been used.

When placing recommendations on a report and consent the prescribed reporting authority should consider the relevance of any recommendation to the matter being sought and whether the RBS can reasonably enforce the recommendation.

Recommendations should directly relate to the matter being decided upon. For example if a report and consent is being sought for additional wall length along a boundary a recommendation relating to the finish of the wall facing the adjoining property may not be appropriate as the colour or finish does not relate to the wall length.

If an adjoining owner places a condition on their agreement to the proposal the council needs to consider if the condition can be placed as a recommendation or whether it could be a separate agreement between the two property owners.

See Appendix 1 for an example.

11.2 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).

See Appendix 2 for an example.

12. TIME LIMITS

Schedule 3 of the Regulations specifies time limits within which reporting authorities must supply a report and consent.

Class 1 or 10 building 10 business days
(for example Regulation 310, 802 etc)

Class 1 or 10 building 15 business days
(Div.2, Part 4)

Class 2 – 9 building 15 business days

What if a reporting authority fails to supply a report or consent?

The RBS may proceed to decide an application without a report or consent being obtained, if a copy of the report is not supplied by the reporting authority within the prescribed time.

This does not apply to an application made to council.

If a reporting authority (other than council) does not inform the RBS or applicant of its consent or refusal of an application within the prescribed period, it is then considered to have consented to a permit.

If council does not inform the RBS or applicant of its consent or refusal of an application within the prescribed timeframe, an applicant may appeal to the BAB against council's failure to consent or refuse the application.

13. APPEAL PROCESS

Where can an appeal be made?

An appeal can be lodged with the BAB.

An application form and supporting information is to be lodged with the relevant fee.

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A copy of the application form can be downloaded from the Victorian Building Authority (VBA) website www.vba.vic.gov.au or contact the BAB on 1300 815 127.

When can an appeal be made?

Section 144 of the Act allows an appeal to be made against a reporting authority's:

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

Appeals must be made within the prescribed period (see regulation 1601). For example, an appeal against a reporting authority's refusal of an application must be lodged within 30 days of the date that the refusal is issued.

How much does an appeal cost?

Regulation 1602 outlines the fees associated with an application. For further information, contact the BAB on 1300 815 127 or via website www.vba.vic.gov.au

14. EXAMPLES

Regulation 410 - Building height

The proposal involves constructing a garage along a boundary. The wall complies with regulation 415, as the average wall height does not exceed an average of 3.2 metres and does not exceed 3.6 metres in height at any point.

Due to the steep roof, the garage does not comply with regulation 410, as the roof section between the boundary and 1.0 metre setback exceeds the envelope. A report and consent from the relevant council will be required before the RBS can issue a building permit.

Regulation 310 - Building over an easement

An application for a building permit has been lodged for a warehouse development. The title shows an easement running along the side

boundary of the allotment. The office section of the warehouse is proposed to be built over the easement, for a length of 4.0 metres.

The title shows the easement is vested in the interest of council for drainage as well as sewerage. A report and consent must be obtained from council, as well as the relevant water authority, for building work over the easement.

Regulation 802 - buildings on land liable to flooding

Council has designated the land where the subject allotment is located as likely to be flooded by surface water. The proposal is for a dwelling to be constructed on the allotment, with a ground floor garage and first floor residence.

A report and consent will be required from council prior to the building permit being issued.

Regulation 309 - Fire hose reel E1.4 within 4 m of an exit;

A proposed warehouse and office is required to have fire hose reels installed within 4 metres of the exits. Due to the layout of equipment, the fire hose reel in the corner of the building is proposed to be located 6 metres from the exit.

As the proposal does not comply with Section E1.4 of BCA Volume One, report and consent of the chief officer must be obtained under Regulation 309.

In providing the report and consent, the chief officer may include recommendations in relation to the prescribed matter and/or recommendations in relation to non-prescribed matters. In this instance, the RBS must implement the recommendations in relation to a prescribed matter but does not necessarily have to implement the recommendations

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relating to a non-prescribed matter.

The chief officer can appeal the decision of the RBS to issue a permit that differs from or fails to implement a recommendation in a report.

If you have a technical enquiry please email:
technicalenquiry@vba.vic.gov.au or phone
1300 815 127

Victorian Building Authority 733 Bourke Street
Docklands VIC 3008

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APPENDIX 1

DATE

APPLICANT

POSTAL ADDRESS

Dear Sir/Madam,

RE: REGULATION 409(4) OF BUILDING REGULATIONS 2006
PROPOSED DWELLING WITH REDUCED FRONT SETBACK

AT: SITE ADDRESS

I refer to your application for a council report and consent to vary regulation 409 of the Building Regulations 2006 to permit the proposed dwelling at the above address to be setback 4.5 metres from the front boundary in lieu of the required setback of 7.0 metres.

In accordance with the powers delegated by the council under section 98 (1) of the Local Government Act 1989, I hereby APPROVE your application as it is considered to meet the Ministers Guideline MG/12.

The following recommendations apply:

The veranda to the front of the dwelling is not to encroach more than 1.0 metre forward of the allowed reduced setback.

Should you have any queries relating to the above matter please contact on telephone

Yours faithfully,

OFFICER'S NAME (Joe Black) Date of Issue:

POSITION DISCRIPTION (Team Leader)

DEPARTMENT NAME (Building Services)

Note: As the recommendation relates to a prescribed matter, the RBS MUST implement.

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APPENDIX 2

DATE

APPLICANT

POSTAL ADDRESS

Dear Sir/Madam,

RE: REGULATION 409(4) OF BUILDING REGULATIONS 2006
PROPOSED DWELLING WITH REDUCED FRONT SETBACK

AT: SITE ADDRESS

The Municipal Building Surveyor having been delegated to act pursuant to Section 98 of the Local Government Act 1989, has considered your application seeking report and consent of council in relation to regulation 409 for the reduced front setback of the proposed dwelling.

I hereby REFUSE CONSENT TO THE: construction of a dwelling having a minimum front setback of 4.5 metres in lieu of 7.0 metres.

The following are the reasons for refusal:
(the reason listed should refer back to the Ministers Guidelines)

1. The proposal does not meet the Ministers Guidelines, in that;
 - 1.1.1 The setback is not more appropriate when taking into account the prevailing setbacks in the street.
 - 1.1.2 The setback would result in a disruption to the streetscape.

Should you have any queries relating to the above matter please contact on telephone

Yours faithfully,

OFFICER'S NAME (Joe Black) Date of Issue:
POSITION DESCRIPTION (Team Leader)
DEPARTMENT NAME (Building Services)

Note: Under section 144 of the Building Act 1993 an owner may appeal the decision of council to the Building Appeals Board within 30 days.

In the instance where an alternative design would be accepted by council, a separate letter should be issued.