

Guidelines - Adjoining Owners Comments

Guideline title:	Report and Consent - Adjoining Owners Comments
Guideline ref no:	Client Version
Governing policy (ref no):	N/A
Guideline owner:	Municipal Building Surveyor
Approved by:	Municipal Building Surveyor
Date approved:	August 2016 (Amended 10/10/19)
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1. Guideline intent

The Building Act 1993, Schedule 2, Clause 4A(2)(b) requires that Council, in reporting on, or considering whether to consent to an application, form an opinion as to whether the design proposal may result in a nearby allotment suffering detriment and accordingly offer those property owners the opportunity to make a submission in respect of the possible detriment.

2. Purpose/Objective

The purpose of this guideline is to detail parameters that must be considered when forming opinion around which adjoining property owner(s) should be given an opportunity to comment in relation to an application to Council for report and consent pursuant to Part 5 of the Building Regulations 2018.

3. Scope

Providing this general advice to applicants, particularly those who seek information prior to lodging a formal application with Council, will help streamline the assessment process and should reduce processing timeframes.

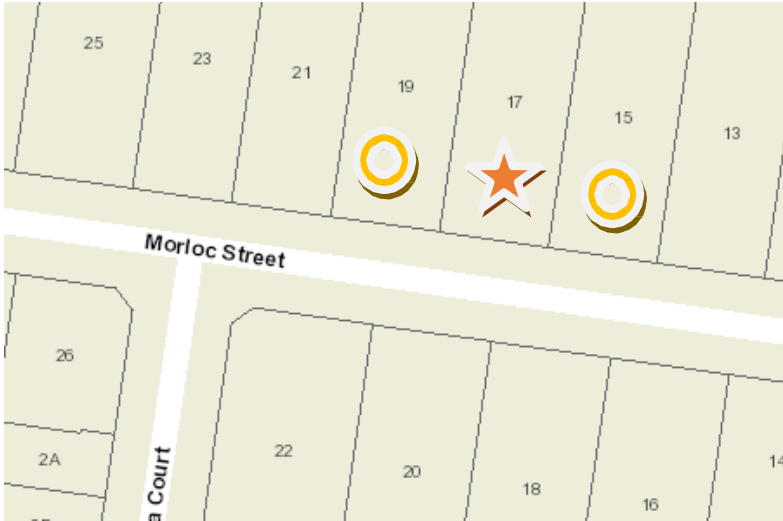
The parameters listed below are minimum requirements only. Council reserves the right to request comments from additional nearby properties during the assessment stage of the application.

Regulation 73

Maximum street setbacks

Comments are **required** to be obtained from the adjoining property owners located either side of the subject allotment, facing the same street. (Refer Diagram 1 for example)

Diagram 1



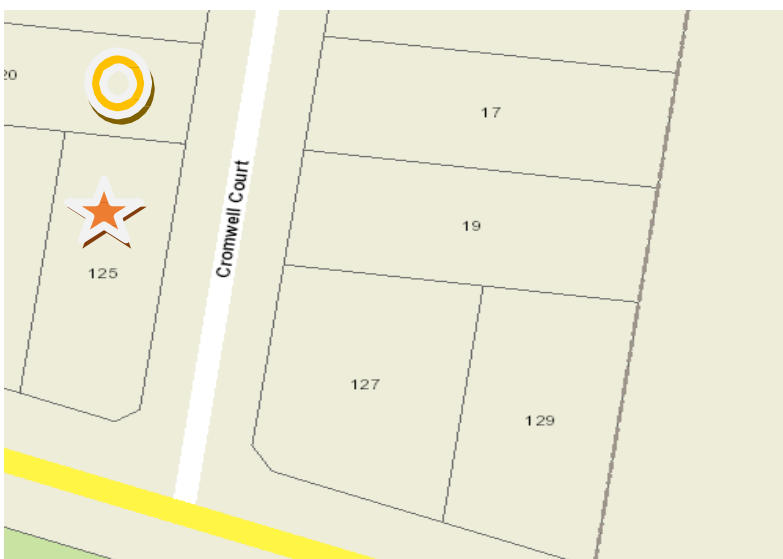
Regulation 74

Minimum street setbacks

Comments are **required** to be obtained from the adjoining property owners located either side of the subject allotment, facing the same street. (Refer Diagram 1 for example)

For any proposed development requiring Council report and consent to reduce the prescribed minimum side street setback, the adjoining property owner(s) located directly adjacent the side of the subject allotment must be given an opportunity to make comment in relation to the proposed side street setback reduction (Refer diagram 2)

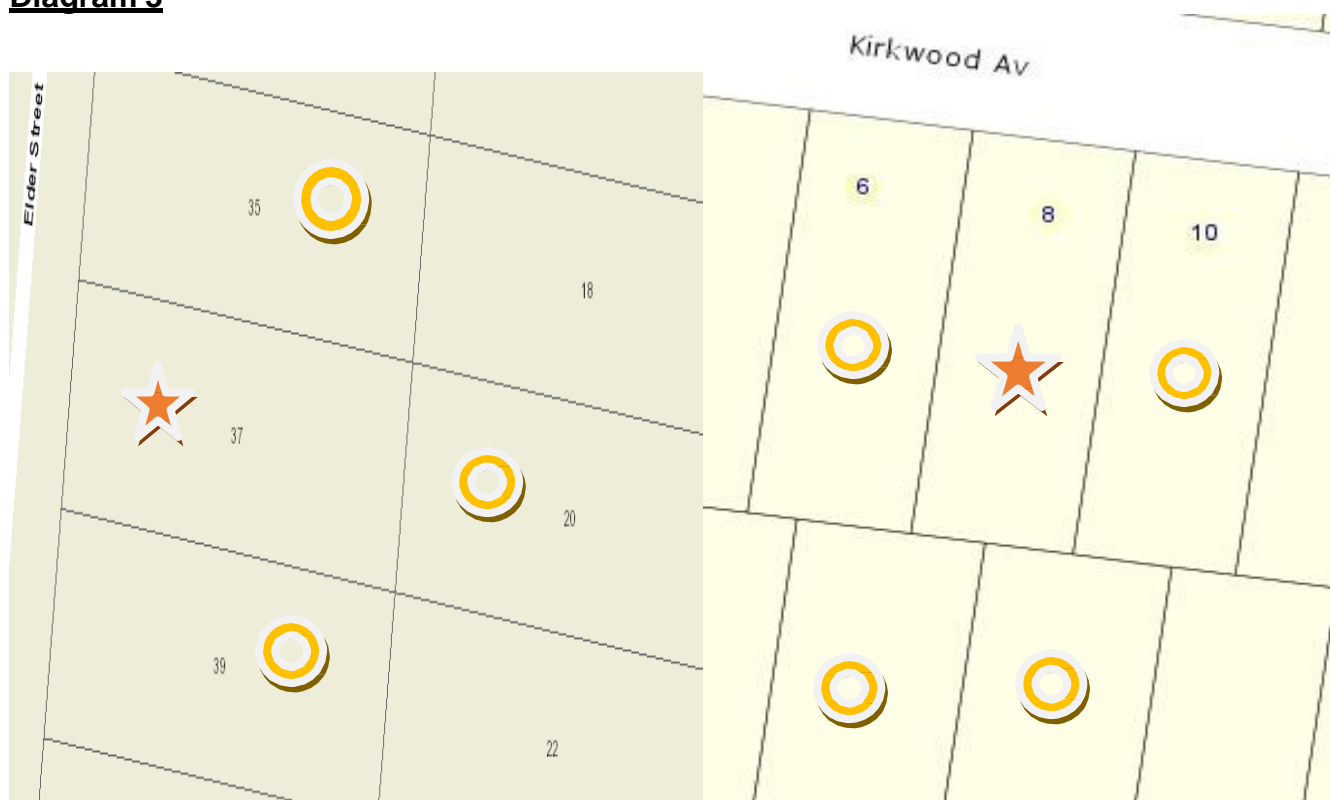
Diagram 2



Regulation 75 Building height

Comments are **required** to be obtained from the adjoining property owners located either side of the subject allotment, and the relevant property owners located directly behind the subject allotment. (Refer Diagram 3 for example).

Diagram 3



Regulation 76 Site coverage

For a development requiring an increase to the prescribed maximum site coverage of greater than 55%, comments will be **required** from the adjoining property owners located either side of the subject allotment and the relevant property owners located directly behind the subject allotment. (Refer Diagram 3 for example).

Note:

1. In circumstances where a request for site coverage increase is equal to or less than 55%, comments will **not be required** from nearby allotments.
2. In zones where standard ResCode applies comments will be **required** from adjoining properties where site coverage is more than 65%. (Refer Diagram 3)

Regulation 77 Permeability

Comments are **not required** to be obtained from nearby allotments.

Regulation 78 Car parking

Comments are **not required** to be obtained from nearby allotments.

***Note:** Council officer to provide an internal memo to Councils Traffic Engineer for comment.

Regulation 79 Side and rear setbacks

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested.

Regulation 80 Walls and carports on boundaries

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested.

Regulation 81 Daylight to existing habitable room windows

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested.

Regulation 82 Solar access to existing north-facing habitable room windows

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested.

Regulation 83 Overshadowing of recreational private open space

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested.

Regulation 84 Overlooking

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested.

Regulation 85 Daylight to habitable room windows

Comments are **not required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested.

Note: Requests for Regulation 85 dispensations will only be approved in exceptional circumstances.

Regulation 86 Private open space

Comments are **not required** to be obtained from nearby allotments.

Regulation 87 Siting of class 10a buildings

Comments are **not required** to be obtained from nearby allotments. (There are no Ministers Guidelines applicable to this regulation)

Regulation 89 Front fence height

Comments are **not required** to be obtained from nearby allotments.

Regulation 90 Fence setbacks from side and rear boundaries

Comments are **required** to be obtained from allotments directly adjacent the proposed fence to which the report and consent is requested. (There are no Ministers Guidelines applicable to this regulation) However, if the fence abuts a boundary that is a side or rear street alignment then comments are **not required**, as per Reg. 89

Regulation 91 Fences on or within 150mm of side and rear boundaries

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested. (There are no Minister's Guidelines applicable to this regulation)

Regulation 92 Fences on intersecting street alignments

Comments are **not required** to be obtained from nearby allotments. (There are no Minister's Guidelines applicable to this regulation)

Regulation 94 Fences and daylight to habitable windows in existing dwelling

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested. (There are no Minister's Guidelines applicable to this regulation)

Regulation 95 Fences and solar access to existing north-facing habitable room windows

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested. (There are no Minister's Guidelines applicable to this regulation)

Regulation 96 Fences and overshadowing of recreational private open space

Comments are **required** to be obtained from allotments directly adjacent the proposed wall / building to which the report and consent is requested. (There are no Minister's Guidelines applicable to this regulation)

Regulation 97 Masts, poles etc.

Comments are **not required** to be obtained from nearby allotments. (There are no Minister's Guidelines applicable to this regulation) You may however choose to request neighbours comments to support your application.



4. Roles & Responsibilities

Applications for report and consent are considered on their merits pursuant to the Minister's Guidelines where applicable, by officers in the Building Department. Final decisions are made by a panel of building officers and are duly signed-off by the Municipal Building Surveyor or Coordinator (Deputy) Building Surveyor.

5. Monitoring, evaluation & review

This procedure will be re-evaluated on a needs basis and/or in circumstances where legislation is amended.

6. Guideline statement

In forming an opinion as to whether a nearby allotment is subject to possible detriment the officer must consider the specific Regulation and associated Minister's Guidelines pursuant to Section 188A of the Building Act. As is always the case in law, it is the 'intent' of that regulation that must be considered; particularly when wording and definitions may be subjective. The Minister's Guidelines set out 'Objectives' for each set of Regulations, and these too are considered in conjunction with the 'Decision Guidelines'.

Unlike Planning applications, there is no avenue for appeal of Council Building Department Report and Consent decisions by nearby property owners and Council use these comments only to assist in the decision making process.

NOTES:

Documents to be made available for comment

The architectural plans applicable to the regulation for which Council report and consent is being sought must be made available to the adjoining allotment owner(s) deemed to potentially suffer detriment.

What if the adjoining owner/s do not respond when requested to provide comments

Should adjoining owners not respond within 21 days from date of post or drop-off handover then the applicant must provide Councils 'Statutory Declaration' to Council as part of the application for Report and Consent. (See standard 'Statutory Declaration' form)

Acceptable standards of documentation

Should requests for comments be sought by an applicant, the applicant must ensure that all material / information provided to the adjoining allotment owner adequately reflects the nature of the proposal and extent of non-compliance and must include;

- A copy of plans with the area of non-compliance clearly identified.
- A statement clearly specifying the details of the departure from the regulation.
- A statement from the adjoining allotment owner that clearly indicates that they 'agree', 'do not agree' or 'offer no comment' to the proposal. (Bayside Councils standard forms must be used)

Through the adjoining allotment owner(s) comments, it must be clear to Council's assessment officer that the adjoining allotment owner(s) have an understanding of the nature of the proposal, specific to the deviation from the regulation to which Council report and consent is sought.

Comments / (agree / disagree / offer no comment) received by Council

Comments are obtained as part of Council following due process dictated by the provisions of Schedule 2, Clause 4A (2)(b) of the *Act*. Comments must be given due consideration by Council as part of the decision making process.

7. Related documents

Refer to Victorian Building Authority website for Minister's Guideline MG-12.

Policies	
Strategies	
Procedures	

8. Definitions & Abbreviations

Term	Meaning
V.B.A.	Victorian Building Authority

