

## Question 1

Who is responsible for enforcing building regulations?

The Victorian Building Authority (VBA), who is the State's principal regulator for building and plumbing practitioners, is responsible for ensuring compliant building and plumbing practices in Victoria. The VBA investigates breaches and offences of building regulation, primarily under the *Building Act 1993*, the Building Regulations 2018 and Plumbing Regulations 2018. The conduct of registered or licensed building and plumbing practitioners is a primary focus of the VBA.

For more information, visit the [Victorian Building Authority](#) website.

## Question 2

If I suspect that a builder has breached their building permit or the planning scheme, who do I report it to?

It depends on the nature of the breach and whether a planning permit was required for the works in question. Below is an explanation for what to do in each circumstance.

### **Making a complaint about non-compliant building work**

In this case, you need to direct your complaint to the [Victorian Building Authority](#). Refer to the VBA's [VBA complaints process](#) page for more information.

In summary, non-compliant building work relates to work that contravenes the regulatory requirements of the *Building Act 1993* and the Building Regulations. Examples of non-compliant building work include:

- building work that has not been constructed in accordance with the building permit
- a building permit that is not in accordance with the Act and the Building Regulations.

Where your concerns relate to non-compliant building work, the VBA will do the following:

- carry out an assessment of the evidence presented to substantiate non-compliance
- consider any actions required by the relevant building surveyor or municipal building surveyor to bring work into compliance
- assess the conduct of the relevant building practitioners in relation to non-compliant building work.

### **I have a concern about building work on an adjoining property**

If you believe your neighbour has undertaken new building work that does not comply with requirements regarding setbacks, building height, privacy or right to light, you will need to contact the Relevant Building Surveyor (RBS) for that building work. The contact details for the RBS should be on signage at the front of your neighbour's house. However, if you cannot find any such signage, you can contact the Shire's Building Team on (03) 5950 1060 or emailing [mpscbuildingpermits@mornpen.vic.gov.au](mailto:mpscbuildingpermits@mornpen.vic.gov.au) to obtain the relevant details.

You must attempt to resolve your concerns with the RBS before lodging a complaint with the [VBA](#). If you have not already done so, the VBA will refer your concerns on to the RBS as a courtesy to you, to respond directly to you.

If you have already attempted to resolve the matter with the RBS but have been unsuccessful, please ensure you provide evidence of your correspondence, including responses from the RBS for the VBA to assess.

Please note that the [Code of Conduct for Building Surveyors](#) came into effect on 1 January 2021. Under principle 8.2 of the Code, when performing statutory functions the RBS is required to have a process in place to deal with issues of non-compliance raised by relevant parties.

### **Siting issues (e.g. setbacks, height, privacy)**

The RBS should ensure that an application for a building permit provides sufficient information to determine that the application complies with the Building Regulations. Examples of matters that fall within this area include:

- minimum street setbacks
- building height
- site coverage
- permeability
- side and rear setbacks
- walls and carports on boundaries
- front fence height
- overshadowing and overlooking
- private open space.

If you are the owner of the adjoining property, you can contact the RBS. On 1 January 2021, the [Code of Conduct for Building Surveyors](#) came into effect, requiring building surveyors to communicate promptly and effectively with their client, the VBA and relevant parties, including adjoining owners. It also requires building surveyors to provide a complaint handling process and address issues of non-compliance brought to their attention as soon as possible. You must attempt to resolve your concerns with the RBS before lodging a complaint with the VBA. If you have not already done so, the VBA may refer your concerns to the RBS in the first instance to address. If you have already attempted to resolve the matter with the RBS but have been unsuccessful, please ensure you provide evidence of your correspondence, including responses from the RBS for VBA assessment. The RBS contact details are usually on the building work sign on the property where the works are being done.

If you still have concerns about siting, and evidence to show a non-compliance with the legislation, the VBA can assist by:

- checking whether the building permit complies with the Building Regulations
- assessing building plans to ensure compliance with the Building Regulations
- assessing the as-built conditions to ensure compliance with the building permit

- assessing the conduct of a practitioner to determine if further investigation is required.

You can make a complaint to the VBA about this matter on the [VBA complaints process](#) page.

### **I am concerned that a building does not comply with a planning permit**

If you have concerns regarding planning matters or building work that is subject to a planning permit, contact the Shire's Planning Services team on (03) 5950 1010 or via email at [planning@mornpen.vic.gov.au](mailto:planning@mornpen.vic.gov.au) to have the matter investigated.

## **Question 3**

Can I appeal a building permit that has been issued for my building project?

### **Modifications and compliance applications**

If you believe that a particular clause of the building regulations, or the Building Code of Australia, shouldn't apply to your building project under a Building Permit, or should apply in a modified or varied form, you can submit a modification request to the [Building Appeals Board \(BAB\)](#).

If a regulation relates to access provisions for people with a disability, the application must demonstrate how meeting this requirement would impose unjustifiable hardship on the applicant.

You can make a modification application if you are:

- the owner of the building or land
- a representative acting on behalf of the owner
- a municipal building surveyor or a public authority
- a lessee (for modifications to access provisions).

An owner, building surveyor or the [Victorian Building Authority](#) may apply to the BAB for a determination that the design of a building complies with the Act, the building regulations or the Building Code of Australia.

### **Appeal applications**

If you are dissatisfied with a decision under the *Building Act 1993* (the Act) or the Building Regulations 2018, you may have the right to apply to the [Building Appeals Board \(BAB\)](#) to appeal that decision under Part 10 of the Act. In exceptional circumstances, you may be eligible for a fast-tracked appeal. The BAB can hear appeals regarding:

- refusal to issue or amend an occupancy or building permit
- a decision to give a person a written direction to fix building work
- temporary approval to occupy a building
- refusal to consent to the termination or appointment of a building surveyor
- a determination regarding protection work
- a building notice, building order or emergency order
- a decision under the Building Regulations 2018

- a decision of a relevant authority such as a council in respect of report and consent applications
- a decision of the Victorian Building Authority under the Building and Construction Industry Security of Payment Act 2002
- a council decision under Part 14 of the *Residential Tenancies Act 1997* (caravan parks and movable dwellings)
- a determination made by the relevant council regarding the construction date of a swimming pool.

You can lodge an appeal if you are:

- the owner of the building or land
- a representative acting on behalf of the owner
- a reporting authority
- the building surveyor
- an adjoining owner in matters involving adjoining property protection work.

There are strict time-limits prescribed by the Building Regulations 2018 by which you must file with the Board your appeal application. If you file after the date by which you must file, the Board does not have the power to extend the time in which you may file with the Board nor does it have jurisdiction to hear and determine the appeal if the appeal is filed after the date by which you must file the appeal.

For more information on appeal periods, please refer to r 271 of the Building Regulations 2018 or email [registry@buildingappeals.vic.gov.au](mailto:registry@buildingappeals.vic.gov.au) or chat on live chat via the [BAB website](#). Information about what to submit to the BAB and next steps can also be found on the BAB website.

## Question 4

[Can I appeal a building permit that has been issued to my neighbour's building project?](#)

No. Once a building permit has been issued to your neighbour's building project there is no opportunity to appeal it.

The only time where you may provide feedback about your neighbour's building project is if you receive notice from the Municipal Building Surveyor (MBS) about your neighbour wanting to vary a siting requirement. This occurs through the Report and Consent process under the Building Regulations. At this time, you will have an opportunity to 'object' to your neighbour's request to vary a siting requirement. If your objections are 'not considered frivolous', the MBS would refuse to give consent. Your neighbour may then apply for dispensation via the Building Appeals Board, in which case you may participate at the hearing. To learn more about the Report and Consent process and participating in a building appeals hearing, visit the [BAB website](#).

## Question 5

### Why wasn't I notified about a new house that is being built in my street?

Not all landowners in a street are entitled to be notified of all new houses being built in their street. The extent of notification given about a new house depends on a range of factors such as:

- a) whether a planning permit is required for the new house or only a building permit, and
- b) whether a neighbour may be materially affected by the development of a new house in their street (which is often determined by how close they are to the property of the new house (i.e. immediately adjacent or several houses away))

An adjoining neighbour would generally be notified of a proposed on-dwelling on a lot if the application for the new house requires a planning permit and the Mornington Peninsula Planning Scheme requires that application to be advertised. The Shire advertises the planning permit application to neighbours immediately adjoining the property and to other nearby neighbours (such as those that may have their views impacted by the new house). The exact extent of notice is determined by the Shire.

If the new house does not require a planning permit, an adjoining owner would receive notice under any of the following circumstances:

- the RBS has determined that the applicant (the building owner or agent of owner) is required to carry out protection work; the applicant must then serve a Protection Work Notice on an adjoining owner and provide details about the proposed protection work.
- the applicant seeks a dispensation from the Municipal Building Surveyor (MBS) to vary a requirement in Part 5 of the Building Regulations 2018 via Report and Consent and the MBS decides to seek the opinion of an adjoining owner.

## Question 6

### Do I need a permit to remove vegetation?

Many areas of the Mornington Peninsula are affected by planning controls which may trigger the need for a planning permit before vegetation can be removed, lopped or destroyed.

In general, a planning permit may be needed to remove, lop or destroy any vegetation if the site is affected by an overlay that requires a planning permit to remove, lop or destroy any vegetation, e.g. the Environmental Significant Overlay (ESO), Vegetation Protection Overlay (VPO), Significant Landscape Overlay (SLO) and Erosion Management Overlay (EMO).

If the vegetation concerns native vegetation, a planning permit may be needed to remove, destroy or lop native vegetation, including dead native vegetation, even if the site is not affected by an overlay that may require a planning permit.

However, if the vegetation is near an existing building used for accommodation that is located in an area that is designated as a bushfire prone area under the *Building Act 1993*, then no permission is required under Clause 52.12 (Bushfire Protection Exemptions) to:

- remove, destroy or lop any vegetation within 10 metres of the existing building\*

- remove, destroy or lop any vegetation except trees within 30 metres of the existing building\*
- remove, destroy or lop any vegetation except trees within 50 metres of the existing building\* if it is also located in the Bushfire Management Overlay (BMO).

*\* The existing building must have been constructed before 10 September 2009, or approved by a planning permit or a building permit issued before 10 September 2009, or constructed to replace a dwelling or dependent persons unit that was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.*

Besides the bushfire protection exemptions under Clause 52.12, other exemptions to removing, destroying or lopping vegetation also apply through a range of circumstances. These exemptions are contained in the overlays that may trigger a planning permit to remove, destroy or lop vegetation, and the provisions under Clause 52.17 (Native Vegetation).

To determine if a planning permit is required to remove vegetation on your land, please contact the Planning Services team on (03) 5950 1010, or view the [Mornington Peninsula Planning Scheme](#).

## Question 7

Do I need a planning permit to erect a new boundary fence?

As per the Victoria Planning Provisions (VPP) under Clause 62.02-2, a planning permit is not required to construct a fence unless it is specifically required by a planning scheme. The Mornington Peninsula Planning Scheme specifies a range of instances where a permit is indeed required for a fence. These are explained below. If you are unsure whether you need a planning permit, contact the Shire's Planning Services team on (03) 5950 1010 or via email at [planning@mornpen.vic.gov.au](mailto:planning@mornpen.vic.gov.au).

### Fence provisions in residential zones

Some residential zones contain provisions relating to a front fence such as the General Residential Zone (GRZ), Neighbourhood Residential Zone (NRZ), and Mixed Use Zone (MUZ).

In the GRZ or NRZ, a planning permit is required to construct or extend a front fence within 3 metres of a street if all of the following apply:

- the fence is associated with one dwelling on a lot that is smaller than the size specified in a schedule to the zone; if no size is specified in a schedule to the zone, then 300 square metres.
- the fence exceeds the maximum height specified in a schedule to the zone; if no maximum height is specified in a schedule to the zone, then the maximum height specified in Clause 54.06-2, i.e. 2.0 metres for a street in a Transport Zone 2, or 1.5 metres for all other streets.

In the MUZ, a planning permit is required to construct or extend a front fence within 3 metres of a street if all of the following apply:

- the fence is associated with 2 or more dwellings on a lot or a residential building.

- the fence exceeds the maximum height specified in a schedule to the zone; if no maximum height is specified in a schedule to the zone, then the maximum height specified in Clause 55.06-2, i.e. 2.0 metres for a street in a Transport Zone 2, or 1.5 metres for all other streets.

### **Fence provisions in overlays**

Some overlays contain provisions relating to a fence such as the Environmental Significance Overlay (ESO), Significant Landscape Overlay (SLO), and Design and Development Overlay (DDO).

A planning permit would be required if:

- the overlay provides that a planning permit is required if specified in the schedule and the schedule specifies so.
- the overlay provides that a planning permit is required unless the schedule specifies otherwise and the schedule does not specify otherwise.

### **Building permits for a fence**

A building permit may be required to construct a fence even if a planning permit is not required. You can learn more about whether a building permit is required to construct a fence on the [Shire's website](#).

## **Question 8**

Who can tell me whether or not I need a planning permit (for anything)?

You can find out whether you need a planning permit by:

- contacting the Shire's Planning Services team on (03) 5950 1010 or via email at [planning@mornpen.vic.gov.au](mailto:planning@mornpen.vic.gov.au)
- making a [general enquiry](#) with the Shire for either a verbal or written response.
- checking the [Mornington Peninsula Planning Scheme](#)
- seeking professional advice from a Relevant Building Surveyor (RBS) or qualified planning consultant.

## **Question 9**

Who enforces neighbourhood character?

Mornington Peninsula Shire is responsible for developing local planning policy and provisions to protect and enhance neighbourhood character which are expressed in the Mornington Peninsula Planning Scheme. Proposed Planning Scheme Amendment C219morn seeks to implement new neighbourhood character policy and controls into the Planning Scheme based on the recommendations of Council's adopted municipal wide [Neighbourhood Character Study and Guidelines \(Ethos Urban, 2019\)](#). (Refer below for further details about neighbourhood character in the planning scheme).

Ensuring new development complies with a preferred neighbourhood character outcome is the responsibility of a range of bodies both directly and indirectly. These include:

- the Mornington Peninsula Shire, in making decisions about planning permit applications under the Mornington Peninsula Planning Scheme and *Planning & Environment Act 1987*, and enforcing compliance with planning permit conditions issued by the Shire,
- the Victorian Civil and Administrative Tribunal in determining appeals about planning permit applications and related matters,
- private building surveyors in issuing building permits,
- the Municipal Building Surveyor in assessing Report and Consent applications to vary building siting requirements under the Building Regulations,
- the Victorian Building Authority in enforcing Building Regulations, and
- the Victorian Building Appeals Board in determining appeals about building permits

### **Neighbourhood Character in the Planning Scheme**

Under Clause 15.01-5S (Neighbourhood Character) of the Planning Scheme, which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place, the Mornington Peninsula Shire must:

- support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.
- ensure the preferred neighbourhood character is consistent with medium and higher density housing outcomes in areas identified for increased housing.
- ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:
  - pattern of local urban structure and subdivision.
  - underlying natural landscape character and significant vegetation.
  - neighbourhood character values and built form that reflect community identity.

As per the State Government’s advice in Planning Practice Note 90: Planning for Housing (DELWP, 2019), each local council in Victoria must undertake local strategic studies when planning for housing. These studies must include a housing strategy, which may also be accompanied by a neighbourhood character strategy along with other relevant strategic work such as heritage, landscape, environmental or land capability studies.

While a housing strategy identifies the extent and nature of future housing, a neighbourhood character strategy assists in identifying valued characteristics of areas that need to be considered when identifying the preferred future character for residential areas. Actions can then be identified to ensure that existing character is respected, or a preferred new character is achieved.

As required by the State Government, the Shire has prepared the [Housing and Settlement Strategy: Refresh 2020-2036 \(MPS, 2020\)](#) and the municipal wide [Neighbourhood Character Study and Guidelines \(Ethos Urban, 2019\)](#). The housing strategy, adopted in July 2020, outlines how future housing and population growth will be accommodated on the Mornington Peninsula over the next 16 years while ensuring the special values and character of the Peninsula are protected for current and future Victorians. The neighbourhood character study, adopted in



October 2019, seeks to ensure that the valued characteristics of the Mornington Peninsula's residential areas remain protected while accommodating future population growth and providing housing diversity.

## Question 10

Where can I find information about the character protections that apply to my street?

You can find out about existing character protections that currently apply to your street under the Mornington Peninsula Planning Scheme by:

- contacting the Shire's Planning Services team on (03) 5950 1010 or via email at [planning@mornpen.vic.gov.au](mailto:planning@mornpen.vic.gov.au)
- making a [general enquiry](#) with the Shire for either a verbal or written response.
- checking the [Mornington Peninsula Planning Scheme](#)
- seeking professional advice from a qualified planning consultant.

To find information about the character protections proposed to apply to your street under proposed Planning Scheme Amendment C219morn:

- enter your address in the 'Property Search' tool on the [amendment's webpage](#) which will generate identifying and explaining the proposed controls for your property, or
- contact the Shire's Strategic Planning team on (03) 5950 1003 or via email at [Strategic.Admin@mornpen.vic.gov.au](mailto:Strategic.Admin@mornpen.vic.gov.au)

[Amendment C219morn](#) proposes changes to the Mornington Peninsula Planning Scheme to introduce new controls that would protect and enhance the valued character of the Peninsula's residential areas that currently do not have specific neighbourhood character requirements other than the default requirements in the Victoria Planning Provisions (VPP), i.e. Clause 54 and Clause 55 ("ResCode") requirements. The proposed character controls are underpinned by Council's adopted [Neighbourhood Character Study and Guidelines \(Ethos Urban, 2019\)](#).

If your land is currently in the General Residential Zone (GRZ) or Neighbourhood Residential Zone (NRZ), the proposed character controls would primarily be located in a schedule to the zone. If your land is in the Low Density Residential Zone (LDRZ), the proposed character controls would be located in a new schedule to the Design and Development Overlay (DDO).

Some of the Peninsula's residential areas are identified to have a special neighbourhood character that warrants stronger protection. These areas comprise the Ranelagh Estate in Mount Eliza, the northern part of The Avenue in Rosebud, the northern part of Tootgarook, and a small area in the northeast part of Rye. For these areas, Amendment C219morn would apply the Neighbourhood Character Overlay (NCO) with schedules that contain stronger character controls.

## Question 11

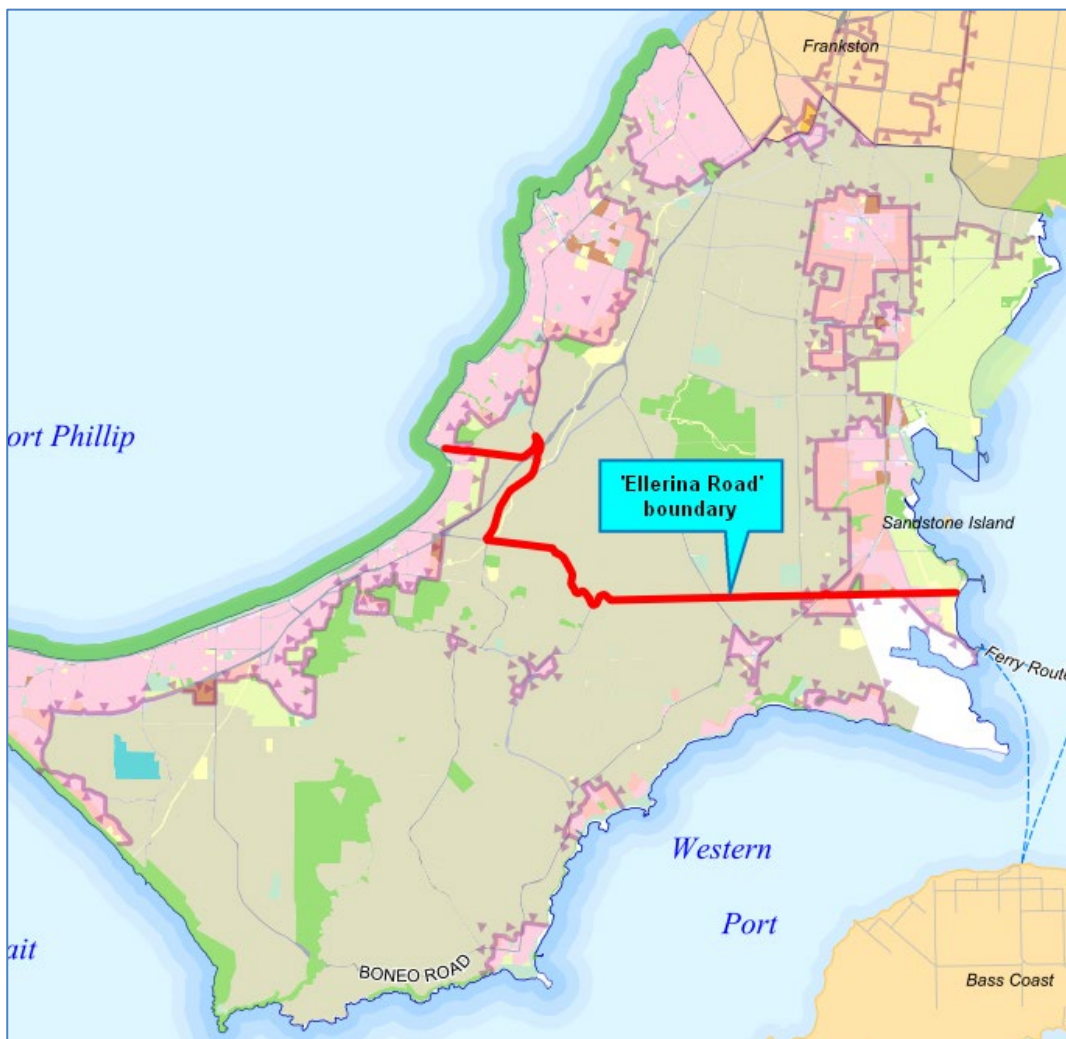
I live on a steep sloping block. How can I build a 2-storey house with a height of more than 8 metres in the NRZ?

If your land is not affected by a schedule to the Design and Development Overlay (DDO) that contains a mandatory maximum building height requirement of 8 metres and 2 stories, you may construct a 2-storey house with a height of up to 9 metres given the mandatory maximum building height in the parent NRZ provisions is 9 metres.

If your land is affected by a schedule to the Design and Development Overlay (DDO) that contains a mandatory maximum building height requirement of 8 metres and 2 stories, you may still construct a 2-storey house with a height of up to 9 metres provided your land is located north of the 'Ellerina Road' boundary\*. Nonetheless, a planning permit will be required.

In addition to the above, if the slope of the natural ground level, measured at any cross-section of the site of the building wider than 8 metres, is greater than 2.5 degrees, you may construct a 2-storey house that exceeds the maximum building height requirement of 9 metres by up to 1 metre.

\* The 'Ellerina Road' boundary is defined by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana Road, Frankston-Flinders Road and Disney Street (see image below).



## Question 12

Will C219morn significantly increase the number of Report and Consent applications for Council's Building Department?

Amendment C219morn is not expected to significantly increase the number of Report and Consent applications for Council's Building Department. The reasons for this are explained below.

### **Firstly, what is a Report and Consent?**

A Report and Consent is required when an application for a single house on a lot is assessed under the Building Regulations and the applicant seeks a dispensation from the Shire's Municipal Building Surveyor (MBS) to vary any number of siting requirements contained in Part 5 of the Building Regulations. Examples of siting requirements that applicants can seek dispensation for include:

- minimum street setbacks
- building height
- site coverage
- permeability
- side and rear setbacks
- walls and carports on boundaries
- front fence height
- overshadowing and overlooking
- private open space.

The siting requirements contained in Part 5 of the Building Regulations are also included in the Planning Scheme under Clause 54 (for one dwelling on a lot) which is often referred to as 'ResCode'.

### **When is a Report and Consent required?**

The table below summarises when a Report and Consent is required to vary a siting requirement for a single house on a lot in the GRZ or NRZ.

Generally speaking, if a single house on a lot requires a planning permit and the relevant planning controls require assessment of the house against ResCode, a Report and Consent would not be required to vary any siting requirements at the subsequent building permit stage because siting requirements would already be dealt with via the planning permit assessment.

For a lot in the LDRZ, a Report and Consent is required to vary a siting requirement even if the application is triggered under the DDO. This is because ResCode does not apply to dwellings and residential buildings in the LDRZ.

Lot size is under 500 m <sup>2</sup>	Lot size is at least 500 m <sup>2</sup>		
A Report and Consent is <b>not</b> required to vary a siting requirement given a planning permit is required and the assessment needs to consider ResCode under the GRZ or NRZ.	<b>Not affected by any planning overlay, or is affected by an overlay that does not require ResCode assessment, e.g. the BMO, ESO, SLO, HO.</b>	<b>Affected by a planning overlay that requires ResCode assessment, i.e. the DDO.</b>	
	A Report and Consent is required to vary a siting requirement whether or not a planning permit is required under the overlay.	<b>All planning permit triggers under the DDO are met.</b>	<b>At least one planning permit trigger under the overlay is not met.</b>
		A Report and Consent is required to vary a siting requirement given a planning permit is not required.	A Report and Consent is <b>not</b> required to vary a siting requirement given a planning permit is required under the DDO.

### Impact of Amendment C219morn

Amendment C219morn may increase the number of Report and Consent applications because it proposes to:

- remove unnecessary planning permit triggers (in DDOs), and
- introduce tighter ResCode requirements (in GRZ and NRZ schedules).

Report and Consent applications may increase in circumstances where a house is proposed for a lot that is at least 500sqm and is:

- not affected by any planning overlays,
- affected by a planning overlay that does not require ResCode assessment, or
- affected by a planning overlay but does not trigger a planning permit because it meets all the requirements of the overlay.

In these circumstances, the house would not be assessed under the planning system - it would be assessed under the building system against the siting requirements set out at Part 5 of the Building Regulations (i.e. 'ResCode').

Because Amendment C219morn is proposing to introduce tighter 'ResCode' requirements, landowners may not be willing to comply with these new requirements and therefore seek Report and Consent via the building system to vary one or more requirement.

Whilst it is difficult to estimate how many more Report and Consent applications may arise 'post-C219morn', the increase is not expected to be significant. This is because the planning permit triggers that historically generate the most planning permit applications (i.e. the 'building height' and 'cut and fill' triggers) and which require ResCode assessment are proposed to be retained under C219morn. This means that the siting requirements for most 'single dwelling on a lot' proposals would still be fully assessed under the planning system - not the building system.