

Department of Transport and Planning  
March 2024

**Regulatory Impact Statement for  
resetting fees prescribed in the  
Building Regulations 2018**



## Acknowledgements and limitations

The Department of Transport and Planning acknowledges its responsibility for this regulatory impact statement (RIS) which reviewed the prescribed fees listed under Regulation 286 of the Building Regulations 2018.

This RIS has been prepared for the express purpose of considering the costs, benefits and alternatives to regulatory proposals. Other potential uses of the information contained in the RIS has not been a consideration in its development. No reliance should be placed on this document for any other purpose. The information contained in this RIS has not been subjected to an audit or any form of independent verification.

### Prepared by

Deloitte Access Economics

<https://www.deloitte.com/au/en.html>

This report is prepared solely for the use of the Department of Transport and Planning for the purpose of reviewing and resetting the prescribed fees listed under Regulation 286 of the Building Regulations 2018. This report is not intended to and should not be used or relied upon by anyone else and we accept no duty of care to any other person or entity. You should not refer to or use our name or the advice for any other purpose.

Deloitte Access Economics is a member of Deloitte's global economics group. Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities. DTTL (also referred to as "Deloitte Global") and each of its member firms and their affiliated entities are legally separate and independent entities. DTTL does not provide services to clients.

Liability limited by a scheme approved under Professional Standards Legislation.

© The State of Victoria Department of Transport and Planning 2024



This work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Transport and Planning (DTP) logo. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>

ISBN 978-0-7311-9310-3 (pdf/online/MS word)

### Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

## Accessibility

If you would like to receive this publication in an alternative format, please telephone the DTP Customer Service Centre on (03) 9655 6666, email [building.policy@delwp.vic.gov.au](mailto:building.policy@delwp.vic.gov.au), or via the National Relay Service on 133 677 [www.relayservice.com.au](http://www.relayservice.com.au). This document is also available on the internet at [www.building.vic.gov.au](http://www.building.vic.gov.au).



## TABLE OF CONTENTS

<b>GLOSSARY .....</b>	<b>3</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
CONTEXT .....	4
THE FEES PRESCRIBED BY THE REGULATIONS LISTED UNDER REGULATION 286 .....	4
<b>1 BACKGROUND .....</b>	<b>10</b>
1.1 INTRODUCTION .....	10
1.2 THE VICTORIAN REGULATORY FRAMEWORK FOR BUILDING WORK.....	10
1.3 FEE-COLLECTING ENTITIES FOR THE FEES LISTED UNDER REGULATION 286 .....	12
1.4 THE VICTORIAN GOVERNMENT’S PRICING PRINCIPLES.....	21
1.5 ABOUT THE RIS.....	22
1.6 STRUCTURE OF THE REPORT .....	23
<b>2 THE PROBLEM.....</b>	<b>24</b>
2.1 BROAD BENEFITS OF BUILDING REGULATION .....	24
2.2 THE PROBLEM IF THE FEE REGULATIONS ARE NOT REMADE.....	24
2.3 OBJECTIVES .....	25
<b>3 FEE COST BASE.....</b>	<b>26</b>
3.1 COSTING METHODOLOGY .....	26
3.2 CURRENT AND FUTURE COST BASE .....	26
3.3 CURRENT COST RECOVERY LEVELS .....	28
<b>4 IDENTIFICATION OF OPTIONS.....</b>	<b>30</b>
4.1 APPROACH TO OPTIONS DEVELOPMENT.....	30
4.2 RATIONALE FOR RECOVERING COSTS.....	30
4.3 THE BASE CASE .....	30
4.4 SUMMARY OF OPTIONS – VBA .....	31
4.5 SUMMARY OF OPTIONS – BAB.....	32
4.6 SUMMARY OF OPTIONS – BRAC .....	34
4.7 SUMMARY OF OPTIONS – COUNCILS.....	34
<b>5 OPTIONS ANALYSIS .....</b>	<b>37</b>
5.1 APPROACH TO FEES OPTIONS ANALYSIS.....	37
5.2 PREFERRED OPTIONS FOR FEES COLLECTED BY THE VBA, BAB AND BRAC.....	37
5.3 MULTICRITERIA ANALYSIS FOR COUNCIL FEES.....	38
5.4 SUMMARY OF IMPACT OF THE PROPOSED FEES.....	42
<b>6 COMPETITION AND SMALL BUSINESS IMPACTS.....</b>	<b>47</b>
6.1 SMALL BUSINESS CONSIDERATIONS .....	47
6.2 COMPETITION CONSIDERATIONS .....	47
6.3 SMALL BUSINESS AND COMPETITION IMPACT ANALYSIS.....	47
<b>7 IMPLEMENTATION AND EVALUATION .....</b>	<b>49</b>
7.1 IMPLEMENTATION OF THE PROPOSED FEES.....	49
7.2 EVALUATION OF THE PROPOSED FEES.....	49
<b>APPENDIX A CURRENT FEES PRESCRIBED IN THE REGULATIONS AND LISTED IN REGULATION 286.....</b>	<b>51</b>
<b>APPENDIX B STAKEHOLDER CONSULTATION SUMMARY .....</b>	<b>53</b>

# Glossary

Acronym	Full name
<b>The Act</b>	<i>The Building Act 1993</i>
<b>BAB</b>	Building Appeals Board
<b>BPL</b>	Building Permit Levy
<b>BRAC</b>	Building Regulations Advisory Committee
<b>CPI</b>	Consumer Price Index
<b>DTP</b>	Department of Transport and Planning
<b>FTE</b>	Full-time equivalent
<b>FY</b>	Financial year
<b>NCC</b>	National Construction Code
<b>RIS</b>	Regulatory Impact Statement
<b>The Regulations</b>	The Building Regulations 2018
<b>VBA</b>	Victorian Building Authority
<b>VPS</b>	Victorian Public Sector

# Executive Summary

## Context

The Building Regulations 2018 (the Regulations) work alongside the *Building Act 1993* (the Act) and the National Construction Code (NCC) to form the legal and regulatory framework for the building construction sector in Victoria. The Regulations include fees charged by the following entities, who each play a role in the regulation of Victoria's building activity:

- the Victorian Building Authority (VBA) – responsible for monitoring and enforcing compliance with the Act, the Regulations, and the NCC
- the Building Appeals Board (BAB) – a specialist expert tribunal that makes determinations in proceedings relating to the Act and the Regulations
- the Building Regulations Advisory Committee (BRAC) – advises the Minister for Planning on legislative and regulatory matters, along with assessing applications for accreditation of building products, construction methods or designs, components or systems connected with building work
- local councils – responsible for the administration and enforcement of some building activities in their municipality.<sup>1</sup>

At the time the Regulations were made, limited data collected from eight councils during the review were insufficient to inform any substantial changes to the fee structures and levels for councils. As a result, to prompt a review of the fees under the Regulations at a later date, a revocation regulation (Regulation 286) was inserted. Regulation 286 will revoke the regulations listed, which prescribe building related fees, on 1 July 2024.

Deloitte Access Economics was engaged by the Victorian Department of Transport and Planning (DTP) to prepare a Regulatory Impact Statement (RIS) to analyse the impact of remaking the fee regulations listed under Regulation 286, in consultation with entities that administer these fees.

The proposed fees have been developed and analysed in line with the Victorian Government's *Pricing for Value* guide which provide a framework for use by government entities when considering, developing and reviewing user charges and regulatory fees. The *Pricing for Value* guide is underpinned by 12 Pricing Principles which can be used to guide and support fee reviews.<sup>2</sup>

## The fees prescribed by the Regulations listed under Regulation 286

There are eight regulations which prescribe fees throughout the Building Regulations and are listed under Regulation 286 for revocation on 1 July 2024. This RIS has reviewed all the prescribed fees listed under Regulation 286. These fees are administered by the VBA, BAB, BRAC and local councils and are summarised in [Table E-1](#).

E-1: Fees prescribed by regulations listed under Regulation 286

Regulation	Fee collecting entity	Fee description
<b>Regulation 18</b>	VBA	Fee for an application for owner-builder certificate of consent
<b>Regulation 36</b>	Council	Maximum fees for report and consent
<b>Regulation 45</b>	Council	Fee for lodgement of building documents with council
<b>Regulation 52</b>	Council	Fees for requests for information from council

<sup>1</sup> While the BAB is an independent body, under section 205A(1)(e) of the *Building Act 1993*, any costs or fees received by or on behalf of the BAB must be paid into the Building account of the Victorian Building Authority Fund. Similarly, while the BRAC is also an independent body, under Regulation 244(2) of the Building Regulations 2018, any fee for application for an accreditation for a building product, or renewal or variation of that accreditation, must be paid into the Building account of the Victorian Building Authority Fund.

<sup>2</sup> Department of Treasury and Finance. *Pricing for Value*. Accessed at <https://www.dtf.vic.gov.au/sites/default/files/document/Pricing%20for%20Value%20Guide%20-%20Pricing%20Principles.pdf>



<b>Regulation 244</b>	BRAC	Building product accreditation fees
<b>Regulation 266</b>	VBA	Duplicate building practitioner certificate fee
<b>Regulation 272</b>	BAB	Fees for making an appeal, referral or application to the BAB
<b>Regulation 273</b>	BAB	Fees for fast-track appeals

## Problem

Building professionals, building owners and the broader community benefit from effective regulation. While effective building regulation broadly benefits the community at large, regulatory activity relating to individual buildings and the builders responsible for them and their customers also provides private benefits to those builders and customers (either directly or on behalf of their clients). In line with the Victorian Government's pricing principles, it is therefore appropriate that builders and their customers bear the direct costs associated with such regulatory activity.

If no action is taken and Regulation 286 revokes the fee regulations, the VBA, BAB, BRAC and councils will have fewer resources to fulfill their statutory requirements. These entities would need to seek alternative sources of funding and/or conduct their regulatory activities with fewer resources, which could compromise the effectiveness of building regulation, and the safety and amenity of buildings and their occupants. This scenario would undermine building regulation's overall effectiveness, which in turn would detract from its objectives and reduce its benefits to the broader community.

## Objectives

The fees prescribed in the Regulations and listed under Regulation 286 seek to ensure that effective and efficient regulation of building activities in Victoria is promoted. Specifically, the objectives include:

- **Effective and efficient** - fees are effective in collecting sufficient revenue to support the necessary regulatory activities and services undertaken by each of the fee collecting entities in efficiently fulfilling their statutory requirements. Fees seek to promote the efficient consumption of the regulatory services, while not leading to any unintended consequences. This objective aligns with Pricing Principles 1 and 8.
- **Equitable** - fees support equity by seeking to recover costs from those who give rise to the need for the regulatory activities and acknowledge different users' ability to pay and right to access to justice. This objective aligns with Pricing Principles 2, 5, 6 and 7.
- **Simple** - fees are simple for users to understand and for fee collecting entities to administer. This objective aligns with Pricing Principle 11.

## Cost base

The existing cost base for the VBA, BAB, BRAC and councils has been estimated using a top-down attribution approach, based on data provided by each of the entities relating to costs in 2022-23 associated with undertaking the regulatory activities and services for which they collect fee revenue under the regulations listed in Regulation 286. These costs include direct costs as well as support costs.

To obtain sufficient data from councils to inform the analysis in this RIS, Deloitte undertook substantial data collection and consultation from April 2023 to July 2023. A comprehensive data request was distributed to all Council CEOs in Victoria to provide an opportunity for input on revenue and cost data in relation to the fees collected for building activity in their municipality. Two follow-up workshops were held with a number of select councils to further understand the revenue, costs and drivers of variance associated with each fee type to inform development and refinement of options. Having identified the options under consideration, Deloitte, DTP and the Municipal Association of Victoria (MAV) met again with a number of select councils to seek feedback on the proposed options. Select councils consulted during this process were chosen in consultation with DTP and MAV.

38 councils responded to the data request, with 17 providing sufficiently detailed financial data to support quantitative analysis to ascertain the relevant average cost base across councils in Victoria and to consider options in the context of average levels of cost recovery (noting the costs reported by councils in relation to undertaking the regulatory activity and services for which these fees are collected varied widely between some councils).



Forecast future cost bases for each entity were estimated for the next five financial years, up to 2027-28, using an assumed growth in the volume of building activity over the same period, and applying an annual weighted average of the Consumer Price Index (CPI) from the previous five years.

Table E-2 shows the 2022-23 cost base and revenues for each of the fee-collecting entities, as well as the projected annual average costs over the next five years.

Table E-2: 2022-23 cost base, revenue and levels of cost recovery and forecast annual average costs to 2027-28

Cost category	VBA	BAB	BRAC	Councils (average, per council)
2022-23 cost base	\$882,000	\$2,868,000	\$101,000	\$574,000
2022-23 revenue	\$568,000	\$246,000	\$2,100	\$597,000
<b>2022-23 cost recovery</b>	<b>64%</b>	<b>9%</b>	<b>2%</b>	<b>104%</b>
Forecast average annual cost (FY24 to FY28)	\$983,000	\$3,196,000	\$112,000	\$639,000

It is important to note the cost base reported for councils in Table E-1 is the estimated average cost base per council. Applying this average cost across the 79 councils in Victoria brings the total cost base for regulatory activities associated with council fees listed under Regulation 286 to be approximately \$45 million in 2022-23.

## Options

The options considered for remaking the fees for each entity follow the same broad sequence. The options for each entity include:

- **Option 1:** the status quo. The existing fees are remade in the same structure and at the same fee levels.
- **Option 2:** increase fee levels to achieve full cost recovery. The existing fees are remade in the same structure, with the fee levels increased to achieve full cost recovery for each entity.
- **Option 3:** some variation to the fee structure or levels with a view to increasing aggregate cost recovery. The structure and levels of the fees under Option 3 varies according to each entity's specific considerations.

These options are assessed in comparison to the base case – a counterfactual scenario in which the fees listed under Regulation 286 are revoked on 1 July 2024.

## Analysis of the options

The options for fees administered by the VBA, BAB and BRAC were subjected to a summative, qualitative analysis. This approach is proportionate to the relatively low revenues that these entities accrue from their in-scope fees (see Table E-1).

As the total annual revenue collected by councils in relation to these fees is significant, a more detailed analysis in the form of a multi-criteria analysis (MCA), was undertaken to assess the council fee options.

### VBA fees

Qualitative analysis of the fee options administered by the VBA determined that Option 3 was preferred. Under Option 3, the proposed fee for the owner-builder certificate of consent is proposed to be increased to full recovery of current and future costs. The increase in the fee associated with recovering future costs seeks to cover anticipated costs related to reviewing, upgrading and maintaining the online digital learning portal and assessment content that is used to assess owner-builder competency prior to a certificate of consent being issued. Under Option 3, the fee associated with issuing a duplicate building practitioner's certificate is proposed to remain the same as the current fee, due to the relatively low volume of applications for this service.

Option 3 is preferred because the fee level accurately reflects the cost of the VBA's current regulatory activities, as well as its anticipated future costs.



**BAB fees**

Qualitative analysis of the fee options administered by the BAB determined that Option 3 was preferred. Under Option 3, the BAB fees are proposed to be increased to allow for an increase in the level of cost recovery for the BAB to recover 29 per cent of their costs (current levels of cost recovery for the BAB are at 9 per cent).

Option 3 is preferred because it most appropriately reflects the BAB’s competing policy objectives for setting fees. The BAB’s fee settings need to balance the aspiration that fees reflect the cost of regulatory activity with the imperative of maintaining fees at levels that do not materially impact users’ access to justice (particularly those with a lower ability to pay).

**BRAC fees**

Qualitative analysis of the fee options administered by the BRAC determined that Option 2 was preferred. Under Option 2, the BRAC application fees for accreditation or renewal of accreditation are proposed to be increased 1,077 per cent, to achieve full cost recovery for the BRAC.

While the proposed fee imposes a significant increase from the current fee, Option 2 is preferred because it is a much closer representation of the costs to BRAC (which currently only recover 2 per cent of costs), as well as the benefits received by product owners of having their product accredited.

**Council fees**

A multi-criteria analysis (MCA) was used to assess the impacts of each option for councils. The MCA criteria for the options is outlined in [Table E-3](#).

Table E3: Criteria for MCA analysis

Criteria	Description	Weighting
<b>Criterion 1: Cost recovery</b>	<p>The extent to which each option sets fees at a level which allow councils to recover the costs associated with fee-incurring activities.</p> <p>This criterion reflects Pricing Principle 1 (agencies should aim to recover the full costs of service provision).</p>	33.33 per cent
<b>Criterion 2: Reflective of users’ benefit</b>	<p>The extent to which each option sets fees at levels that capture users’ benefit from councils’ fee-incurring activities. This criterion assesses how effectively each option reflects users’ benefit from regulatory activities through different fee levels.</p> <p>This criterion reflects Pricing Principle 2 (the cost of service provision should be borne by those who benefit from the service).</p>	33.33 per cent
<b>Criterion 3: Simplicity</b>	<p>The extent to which each option reduces user and administration complexity, allowing fees to be simple for users to understand and comply with and councils to administer.</p> <p>This criterion reflects Pricing Principle 11 (pricing structures should be easy to understand).</p>	33.33 per cent

The MCA criteria was used to determine the preferred fee option for fees administered by councils. Each option scored positively compared with the base case, meaning that they would likely deliver a net benefit to the community.

The results of the MCA determined that Option 3 is the preferred option. Under Option 3, the council fees are proposed to be increased for report and consents relating to siting matters and stormwater legal point of discharge works. All other report and consent fees are proposed to remain the same, as are the fees collected by councils for the lodgement of building documents and for requests for information. Under Option 3, report and consents relating to siting matters and



stormwater legal point of discharge were targeted for fee increase, as these types of report and consent activities are high volume and were reported by councils as having significantly varying costs between applications, in addition to being reported as currently under-recovering the costs for councils.

Option 3 best balances the desire for fees to reflect regulatory effort and users' benefit with maintaining administrative simplicity.

## Impact of the proposed fees

The proposed fees for all the fee-collecting entities are outlined in Table 5-5 of this report, along with the proposed per cent increase from fees in the current Regulations. The analysis in this RIS assumes the proposed increase in fees will not have a material impact on overall building activity. This is because the increases in fees directly related to building activity, such as report and consents or owner-builder certificates of consent, are relatively small compared to typical total building costs. For example, the largest increase in this type of fee is a \$125 increase for report and consents related to siting matters.

Some of the increases, such as those for a number of the BAB and the BRAC fees, represent a substantial increase. These fee increases are required to improve the low level of cost recovery currently achieved by these entities for the administration and regulatory activity they are required to undertake to fulfil their statutory requirements (see Table E-1 above). Additionally, while council fees were increased in 2018, fees for the VBA, BAB and BRAC have not been reviewed or increased (outside of indexation) since they were first prescribed in fee units in 2014.

Table E-4 provides an indication of the annual average impact and cost recovery levels the proposed fees are estimated to generate over the period FY25-FY28, as well as the net present value of the estimated revenue over the four-year period (applying a 4 per cent discount rate).

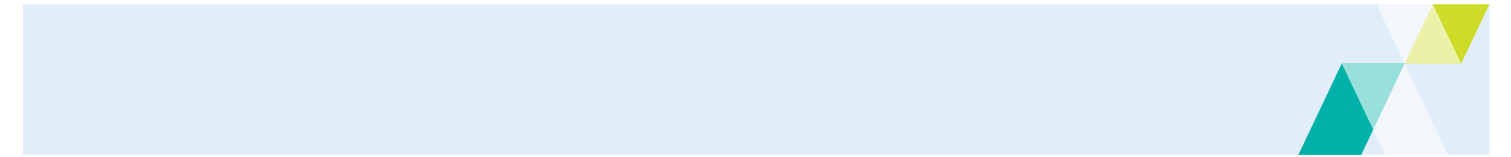
Table E-4: Forecast annual average costs and revenue for fee collecting entities and NPV over FY25-28

	VBA	BAB	BRAC	Councils (average, per council)
<b>Forecast annual average cost</b>	\$1,002,000	\$3,258,000	\$114,000	\$651,000
<b>Forecast annual average revenue</b>	\$1,307,000	\$929,000	\$114,000	\$731,000
<b>Recovery</b>	130%	29%	100%	112%
<b>NPV (Revenue)</b>	\$4,733,000	\$3,366,000	\$414,000	\$2,649,000

While Table E-4 shows that the forecast level of cost recovery for the VBA is 130 per cent, the cost base does not include the anticipated future costs to VBA associated with updating and administering the online owner-builder learning module and assessment material. This will provide the revenue needed to give the VBA capacity and resources for costs related to these updates over the next four years. If the VBA's costs of updating and administering the online owner-builder learning module and assessment material for owner-builders were built into the cost-base, the level of cost recovery for the VBA would be closer to 100 per cent.

Table E-4 shows forecast levels of cost recovery for councils are 112 per cent, on average. This is difficult to avoid, given the wide divergence in costs across all the councils and the need to set a single fee for each service that will not leave some councils under-funded for the services they provide.

The cost recovery data provided by councils suggests that there is a wide distribution of cost recovery proportions for fee-incurring activities. This is primarily driven by the significant variation in unit costs. Consequently, while the proposed increase may improve cost recovery on average across councils, it will likely still result in over- and under-recoveries for a number of councils. Based on the data provided by councils, 14 out of 17 councils would be over-recovering under the proposed fees, while 3 councils would continue to under-recover. This is the same as under the status quo, but with lower levels of recovery for all councils.



For the BAB, **Table E-4** shows that the forecast level of cost recovery is only 29 per cent. The BAB considers the proposed fees provide a reasonable increase in fees to provide greater recovery of their costs, while not impacting too significantly on the ability for users of the BAB system to access justice (particularly, those with a lower ability to pay).

## Implementation and evaluation

The release of the proposed Regulations and this RIS will provide key stakeholders and members of the public the opportunity to consider the recommended options and provide feedback. At the conclusion of the public comment period, DTP will take into account the feedback on both the proposed Regulations and the RIS in finalising the Regulations.

The fees are proposed to take effect on 1 July 2024. Fees will then increase each financial year in line with the Treasurer's annual rate set under the *Monetary Units Act 2004*. Fee units prescribed in the proposed Regulations equate to the dollar values of fees stated in this RIS based on the 2023-24 fee units. As fee units are indexed annually, the proposed new fee values in the RIS may increase in line with the indexation rate on the date of commencement. This will not have material impact on the cost benefit ratio as the indexation would equally apply to the status quo as well as the proposed increase.

Once the proposed Regulations are made, DTP will be responsible for overseeing implementation of the proposed Regulations. The fee collecting entities will be responsible for applying and collecting the new fee rates.

DTP and the fee collecting entities will monitor implementation of the new fees. Through this process, it is anticipated that these entities will identify and manage risks as they arise.

As the total impact of the proposed fees is above the annual \$8 million threshold for a high impact proposal, DTP would ordinarily be required to undertake a mid-term evaluation three to five years following implementation of the Regulations. However, the proposed fees will amend the Building Regulations 2018, which are due to sunset in their entirety in 2028. Therefore, the proposed fees will only be in place for four years and will be reviewed as part of the broader sunset review for the Building Regulations.

DTP (in collaboration with fee collecting entities) will develop measures to monitor the effectiveness of the new fees in raising revenue equivalent to the costs of providing an appropriate level of service in line with statutory requirements. It will also determine the frequency of reporting requirements on these measures.

## Feedback on RIS and proposed Regulations

The Victorian Guide to Regulation also requires a RIS to assess the impact of regulations on bodies corporate and the community. In undertaking this assessment, we have considered questions such as:

- will the proposed changes impact some stakeholders significantly more than others?
- will the proposed changes impact stakeholders' access to regulatory services (particularly in respect of the BAB)?
- will the proposed changes impose a significant administrative burden on fee-administering entities?
- will the proposed changes impose a significant compliance burden on fee-incurring stakeholders?

DTP invites feedback from stakeholders in industry and the broader community that pay these fees regarding any potential impacts the proposed fees may have.

Public comment and submissions are invited on the questions above, this RIS, and the proposed Regulations. Submissions can be made to <https://engage.vic.gov.au/project/proposed-fee-reset-under-the-building-regulations-2018>

All comments and submissions will be treated as public documents unless the comment or submission clearly indicates that the comment or submission is confidential.

Feedback must be received no later than **5.00pm on Tuesday 28 May 2024**. Your feedback will inform the final Regulations.

# 1 Background

This chapter provides context to the current fees prescribed under the Building Regulations 2018 and the entities who collect those fees.

## 1.1 Introduction

In 2017, a sunset review was undertaken to support remaking the regulatory framework for building work in Victoria under the Building Regulations 2018 (the Regulations). The Regulations include building-related fees collected by:

- the Victorian Building Authority (VBA)
- the Building Appeals Board (BAB)<sup>3</sup>
- the Building Regulations Advisory Committee (BRAC)<sup>4</sup>
- local councils.

A number of other instruments also prescribe building-related fees, such as the *Building Act 1993* which sets out fees associated with building permits, and the [Minister's Guideline-10](#) which sets out building practitioner fees.

In reviewing fees prescribed by the Regulations at that time, insufficient data was found upon which to base substantial changes to the fee structures and levels. Given the limited data, no change was made to the VBA, BAB or BRAC fees when the 2018 Regulations were made, however council fees were increased. The VBA, BAB and BRAC fees were first prescribed in fee units in 2014 and have not been increased (outside of indexation) since this time.

To prompt a review of all the fees under the Regulations at a later date, a revocation regulation – Regulation 286 – was inserted into the Regulations, which initially prescribed that all fee-related regulations listed in Regulation 286 would be revoked on 1 July 2020.<sup>5</sup> The revocation date has been extended several times since the Regulations were made, with the fees currently set to be revoked on 1 July 2024. Without these fee provisions, cost recovery would not be achieved by the entities providing regulatory services and the costs to those entities would not be met by those who use or benefit from the services, but instead through other funding sources, such as consolidated revenue.

Deloitte Access Economics was engaged by the Victorian Department of Transport and Planning (DTP) to undertake a review of fees contained within Regulation 286 of the Building Regulations 2018 and prepare a Regulatory Impact Statement (RIS) on proposed changes to amend these fee structures. The review of the fees listed under Regulation 286 and development of this RIS has sought to determine the cost base of the activities relating to these fees, the rationale for recovering costs for these fees and the appropriate fee structures and levels to set these fees at.



## 1.2 The Victorian regulatory framework for building work

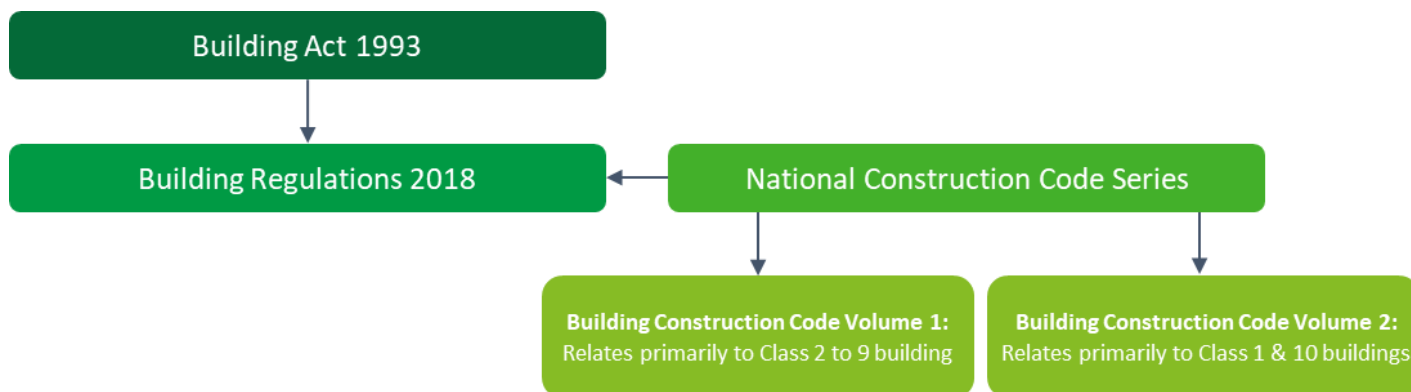
The regulatory framework for building work is underpinned by a combination of legislation, regulations, and the National Construction Code (NCC) (Figure 1-1). The overarching objectives of this framework are to protect the safety and health of people who use buildings and places of public entertainment, and to improve the amenity of buildings.

<sup>3</sup> While the BAB is an independent body, under section 205A(1)(e) of the *Building Act 1993*, any costs or fees received by or on behalf of the BAB must be paid into the Building account of the Victorian Building Authority Fund.

<sup>4</sup> While the BRAC is an independent body, under Regulation 244(2) of the Building Regulations 2018, any fee for application for an accreditation for a building product, or renewal or variation of that accreditation, must be paid into the Building account of the Victorian Building Authority Fund.

<sup>5</sup> Regulation 286 revokes all fees prescribed in the Building Regulations except for fees relating to pool and spa barriers, as these were only introduced for the first time in 2019 through amendments to the 2018 Regulations.

Figure 1-1: Victorian building regulatory framework



Source: Adapted from the Victorian Building Authority

### 1.2.1 Legislative Framework

The *Building Act 1993 (Vic)* (the Act) is the primary legislation responsible for regulating building and plumbing work, and the conduct of building practitioners and plumbers in Victoria. It also sets the legislative framework for building standards and maintenance of specific building safety features. The objectives of the Act are to:

- a) protect the safety and health of people who use buildings and places of public entertainment
- b) enhance the amenity of buildings
- c) promote plumbing practices which protect the safety and health of people and the integrity of water supply and wastewater systems
- d) facilitate the adoption and efficient application of national building and plumbing standards
- e) facilitate the cost-effective construction and maintenance of buildings and plumbing systems
- f) facilitate the construction of environmentally and energy efficient buildings
- g) aid the achievement of an efficient and competitive building and plumbing industry.

### 1.2.2 Regulatory framework

The Act is supported by the Building Regulations 2018 which provide specific requirements for the various types of work conducted in the building industry. The Regulations are subordinate legislation made under the Act and outline requirements relating to:


- building permits
- building work
- building inspections
- occupancy permits
- enforcement
- maintenance of buildings.

The Regulations prescribe the standards for design, construction and use of buildings and places of public entertainment. All regulations made in Victoria are generally in place for a period of ten years, after which they undergo a comprehensive review to ensure that they remain relevant and meet their intended objectives.

#### 1.2.2.1 Regulation 286

At the time the Building Regulations 2018 were being remade, the VBA (and by extension, the BAB and the BRAC as independent bodies established under the *Building Act 1993*) was implementing a raft of reforms and required more time to review the impact of these reforms on the cost of carrying out its statutory functions. Consequently, the VBA, BAB and BRAC fees were remade in the Regulations with no changes, to allow time for this review to conclude. The Regulations could not be remade without fee provisions that provide a legal basis for the VBA, BAB and BRAC to recover the costs of the services they provide.

Limited data was also collected from eight councils during the review, with a small sample indicating wide variance in processing costs per application. While the data was insufficient to inform any substantial changes to the fee structures and



levels for councils, fees were increased closer to full cost recovery based on the information available relating to average costs across the small sample of councils.

Given the insufficient data at the time the Regulations were being remade, the former Department of Environment, Land, Water and Planning committed to a review of fees in the Regulations to allow them to be examined in more detail at a later date. To prompt this review, Regulation 286, a revoking regulation, was introduced under the Regulations.

The regulations prescribing fees listed under Regulation 286 are explained in further detail in [section 1.3](#) along with the entities that collect them. Appendix A provides a detailed list of all fees to be revoked by Regulation 286.

### 1.2.3 National Construction Code

The Regulations adopt the NCC. The NCC combines both building and plumbing construction requirements into a single code. The NCC is maintained by the Australian Building Codes Board which is a joint initiative of federal, state and local governments. The NCC is updated every three years. The most recent edition (NCC 2022) came into effect in Victoria on 1 May 2023.<sup>6</sup>

The NCC consists of three volumes. The first two volumes cover the design and construction requirements for building work and the third volume covers the requirements for plumbing work. Volume One contains technical design and construction requirements for all Class 2 to 9 buildings (multi-residential, commercial, industrial, and public assembly buildings) and their associated structures. Volume Two contains the technical design and construction requirements for Class 1 and Class 10 buildings (certain residential and non-habitable buildings and structures including houses, small sheds, and carports).

## 1.3 Fee-collecting entities for the fees listed under Regulation 286

### 1.3.1 The Victorian Building Authority

#### 1.3.1.1 The role of the VBA

The VBA was established on 1 July 2013 to become the single regulatory body for the building and plumbing industries, through section 193 of the Act, with the ultimate objectives of protecting the health and safety of people who use buildings and places of public entertainment.

The role of the VBA is to regulate the building and plumbing industries in Victoria, protect the community and promote the integrity of the building and plumbing industries through efficient and effective regulation. The VBA is responsible for monitoring and enforcing compliance with the Act, the Regulations, and the NCC. The functions of the VBA are detailed in section 197 of the Act, and those relating to the building industry include:

- to monitor and enforce compliance with the Act and the Regulations
- to administer the scheme for the registration of building practitioners and the scheme for the licensing of building employees
- to monitor the conduct and ability to practise of registered building practitioners and licensed building employees
- to make recommendations to the Minister about the qualifications for registration of building practitioners
- to participate on behalf of Victoria in the development of national building standards
- to promote the resolution of consumer complaints about work carried out by building practitioners
- to conduct and promote research relevant to the regulation of the building (and plumbing) industries
- to collect building permit levy, charge and collect fees for information and training services provided by the VBA, and to administer the VBA Fund.<sup>7</sup>

The cost of undertaking the VBA's functions is intended to be recovered through the fees and levies it collects from the building and plumbing industries, which includes those collected through the regulations listed under Regulation 286. This fee and levy revenue is also used to fund the Building Appeals Board (BAB) (see section 1.3.2) and the Building Regulations Advisory Committee (BRAC) (see section 1.3.3).

<sup>6</sup> New liveable housing, energy efficiency and condensation mitigation requirements in NCC 2022 commence 1 May 2024 and new lead-free plumbing product requirements commence 1 May 2026 in Victoria.

<sup>7</sup> The functions of the VBA also include administration and oversight of the licensing and registration scheme for plumbers in Victoria.

### 1.3.1.2 The fees administered by the VBA

Two of the regulations prescribing fees listed under Regulation 286 are administered by the VBA. These fees are outlined in Table 1-1.

Table 1-1: Regulations prescribing fees listed under Regulation 286 administered by the VBA

Regulation	Fee type	Summary
<b>Regulation 18</b>	Fee for an application for owner-builder certificate of consent	<p>A certificate of consent is required for those who intend to be an owner builder and carry out domestic building works costing more than \$16,000 (see section 1.3.1.3 for more detail).</p> <p>A fee is currently required to be paid to the VBA by all applicants for a certificate of consent. The fee for an application for the issue of a certificate of consent is currently \$109.71 (6.9 fee units).</p>
<b>Regulation 266</b>	Duplicate certificate fee	<p>If a registered building practitioner's certificate is lost or destroyed, the VBA can issue a duplicate or replacement certificate. To do so, the VBA may need to verify insurance and registration details.</p> <p>The VBA has the power under the Regulations to charge for this duplicate certificate when a building practitioner requests one.</p> <p>The prescribed fee for a duplicate building practitioner's certificate is currently \$43.73 (2.75 fee units).</p>

Source: Deloitte Access Economics

### 1.3.1.3 Owner builder certificate of consent

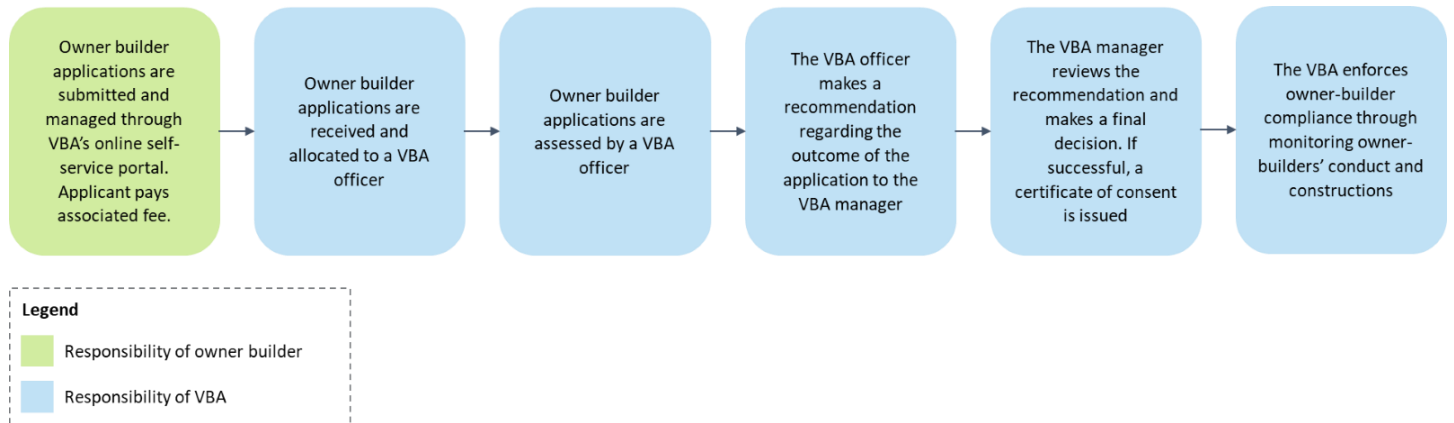
The Act controls who can design and construct building work in Victoria to ensure that building work is carried out in accordance with minimum safety and amenity standards. To do so, the Act specifies who must be appropriately registered to be issued a building permit and undertake building work.<sup>8</sup> Division 3A of Part 3 of the Act enables an owner of the land to undertake domestic building work on a single dwelling. Where the value of this work is more than \$16,000, they must obtain a certificate of consent from the VBA.

A certificate of consent is a written approval issued by the VBA, if the VBA is satisfied the owner-builder meets the requirements in the Act and Regulations including prescribed knowledge of the duties and responsibilities as an owner-builder.<sup>9</sup> This prescribed knowledge is tested through the VBA's owner-builder eLearning assessment. Once the eLearning assessment is complete, applicants must register as a user on the VBA portal (VBA360) and submit an application for an owner-builder certificate of consent. The certificate of consent specifies details of the land, type of building work, the owners of the property and the estimated cost of the building work. It does not guarantee the issue of a building permit and will expire if a building permit has not been obtained within 12 months, the building permit lapses or the owner ceases to own the land to which the certificate relates. The process to obtain a certificate of consent is outlined in Figure 1-2. If a certificate is issued, the VBA maintains a public register of owner builder certificates of consent with details of the address and building work.

<sup>8</sup> Section 16 *Building Act 1993 (Victoria)*.

<sup>9</sup> Section 25E(1)(ab) *Building Act 1993 (Victoria)* and Regulation 19 and Schedule 2 of the Building Regulations 2018.

Figure 1-2: Application process for a certificate of consent



Source: Deloitte Access Economics adapted from VBA

### 1.3.2 The Building Appeals Board

#### 1.3.2.1 The role of the BAB

Section 166 of the Act establishes the BAB as an independent statutory body. The BAB is a specialist expert tribunal that makes determinations in proceedings relating to the Act and the Regulations. These determinations are made having regard to the objectives and purposes of the Act and other relevant considerations.

Part 10 of the Act sets out the BAB's jurisdiction which includes the consideration and determination of:

- appeals in relation to building and occupancy permits, directions to fix building work, temporary occupation of building approvals, terminations and appointments of a building surveyor, protection work, building notices and orders, any matters the Regulations leave to be determined or approved by a person or body, or decisions made under section 42 or section 43 of the *Building and Construction Industry Security of Payment Act 2002*
- referrals to the BAB where a dispute arises in relation to inspections, emergency protection work, insurance, surveys of adjoining property, cost of supervising protection work, other disputes between owners and adjoining owners on matters arising under Part 7 of the Act, the building permit levy, application and effect of the Regulations or party walls
- compensation applications for damage, loss or inconvenience suffered during the carrying out of protection work
- applications for modifications to regulations or applications that they should not apply to a building or land
- applications for modifications to building regulations relating to access for persons with disabilities or applications that they should not apply to a building or land on which a building is to be constructed
- applications for the assessment of whether a particular design or an element of a building complies with the Act or the Regulations.

The BAB hears appeals, disputes, and applications, usually sitting in panels of two or three members. Panel members are made up of professionals from across the building industry, chosen based on the expertise required. Determinations made by the BAB are binding but can be subject to judicial review in the Supreme Court of Victoria.

#### 1.3.2.2 The fees administered by the BAB

Two of the regulations prescribing fees listed under Regulation 286 are administered by the BAB. These fees are outlined in Table 1-2. All fees collected are paid into the building account of the Victorian Building Authority Fund.



Table 1-2: Regulations prescribing fees listed under Regulation 286 administered by the BAB

Regulation	Fee type	Description
<b>Regulation 272</b>	Appeal, referral or application	<p>Regulation 272 prescribes 42 fees administered by the BAB. These fees are required to be paid on commencement of proceedings for appeals, referrals and applications.</p> <p>The fee units vary dependent on the purpose of the fee and whether or not the appeal, referral or application involves a Class 1 or 10 building or a Class 2 to 9 building. The prescribed fees currently range between \$131.81 and \$732.99 (8.29 to 46.1 fee units).</p>
<b>Regulation 273</b>	Fees for fast-track appeals	<p>Regulation 273(1) prescribes a fee for any request to the BAB to fast-track an appeal to begin to hear or otherwise deal with the appeal within 2 business days of the request being made. The prescribed fee to request a fast-tracked appeal is currently \$586.39 (36.88 fee units). Regulation 274(2) requires this fee to be refunded if the fast-track request is refused.</p> <p>If the BAB grants the fast-track request and hears the appeal, the BAB may require the person making the request to pay an additional fee for the time taken for the hearing (including any adjourned hearing) excluding the first 2 hours of hearing. Regulation 273(2) prescribes this fast-track appeal – additional hearing fee. The prescribed fee is currently \$234.53 (14.75 fee units) per hour or part of an hour.</p>

Source: Deloitte Access Economics

### 1.3.2.3 The appeals process

Under Part 10 of the Act, a person may appeal to the BAB if they are dissatisfied with a decision made under the Regulations and some decisions made under the Act. In exceptional circumstances, a person may also be eligible for a fast-tracked appeal. The appeals process is outlined in Figure 1-3.

Once the appeal has been served on the BAB, a proceeding is commenced. The appeal is registered in the BAB’s case management system and is assessed by the registry of the BAB to determine whether any further information is required. In some cases, the BAB may request further information to progress the appeal.

Once all the relevant information has been obtained, the BAB may schedule a directions hearing to make directions for the future conduct of the proceeding and consider whether the parties may benefit from mediation. If this is not required, the BAB, in any event, will send all parties Directions and Orders which outline the dates when documents are to be filed and when an oral hearing (held remotely) or paper hearing will be scheduled.<sup>10</sup>

The oral hearing allows all parties an opportunity to make oral submissions, to tender and hear evidence and to ask questions of the applicant and their witnesses. A panel of BAB members preside over the hearing and considers the submissions and evidence. There may be more than one hearing depending on the complexity of the proceeding.

<sup>10</sup> An ‘oral hearing’ occurs where the parties or their representatives appear before the Board and provides all parties an opportunity to make submissions and to give and hear evidence. Oral hearings, unless otherwise directed, are conducted remotely using audio-visual conferencing technology. Oral hearings transitioned to being conducted remotely during the COVID-19 pandemic and have remained in this format since. A ‘paper hearing’ occurs where the application is considered on the material and documents that have been filed.



A paper hearing may be conducted if all parties consent to the BAB making a determination of the appeal based on written submissions and evidence filed by the parties. This removes the need for parties to appear (remotely) before the BAB. Paper hearings often involve less complex appeals.<sup>11</sup>

After the oral or paper hearing of the appeal, the BAB will make a determination considering all submissions (written and/or oral) as well as any evidence from the parties.

### 1.3.2.4 Modification of building regulations

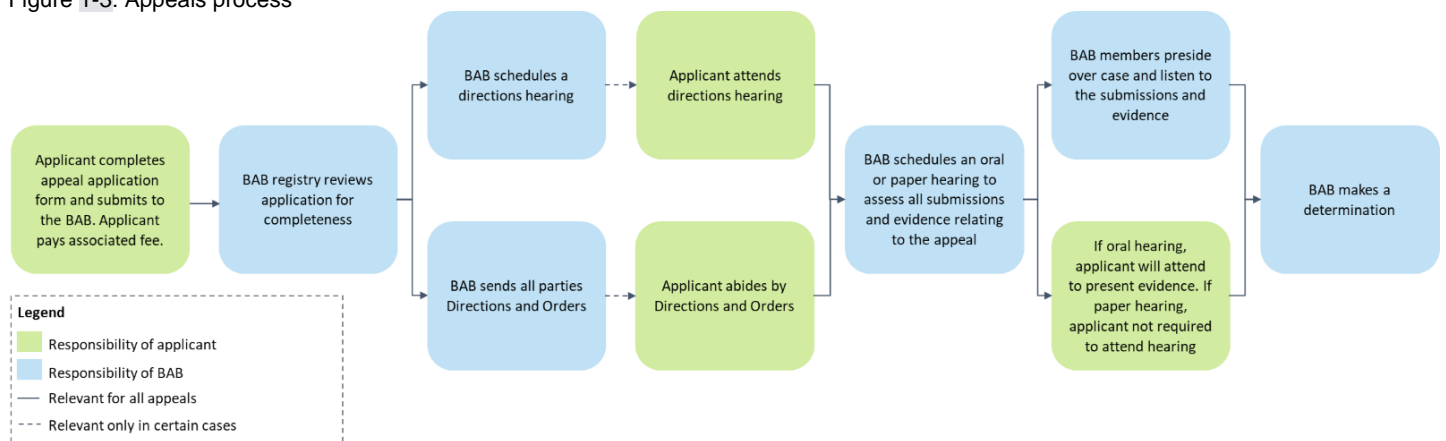
The highest volume of applications received by the BAB are applications made under sub-section 160(2) of the Act, for a determination to modify or vary a provision of the Regulations, or applications for a determination that a provision of the Regulations does not apply to a building or land. The modifications process is outlined in Figure 1-4.

Modification application proceedings are typically conducted via a paper hearing. However, more complex proceedings (such as combustible cladding matters) may require a directions hearing to determine timeframes for filing of materials, and an oral hearing which can include the hearing of expert evidence and oral submissions.

To approve a modification application, the BAB must be satisfied that modifying or varying the provision of the Regulations is reasonable and not detrimental to the public interest, or that the provision applying to the building or land is inappropriate in the particular circumstances.

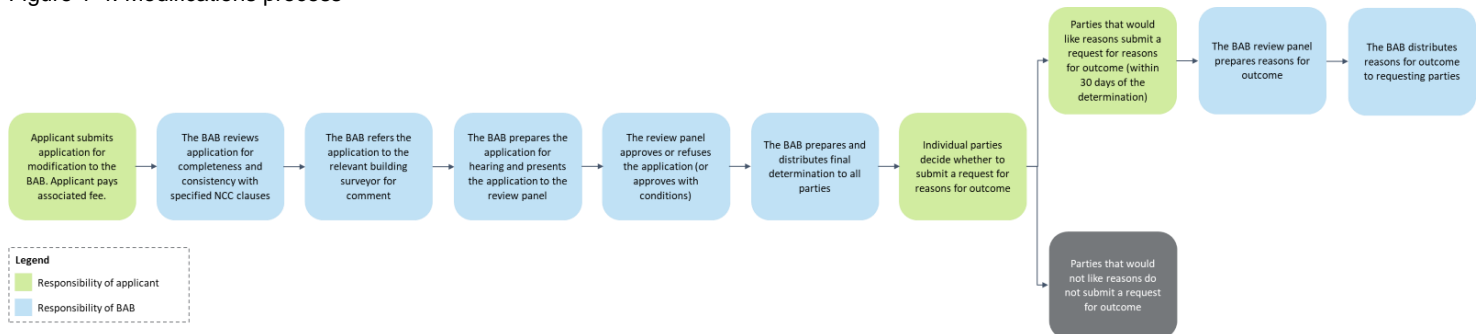
Determinations made by the BAB are final and may be enforced in a court of competent jurisdiction. Requests for judicial review of the BAB's determinations are made to the Supreme Court of Victoria.

Figure 1-3: Appeals process



Source: Deloitte Access Economics adapted from BAB

Figure 1-4: Modifications process<sup>12</sup>



Source: Deloitte Access Economics adapted from BAB

<sup>11</sup> Paper hearings may progress to an oral hearing if the matter becomes more complex than its original assessment, however this does not occur often. In this scenario, no additional fees are required to be paid.

<sup>12</sup> This diagram captures the modification process for more straightforward applications that have no interested parties joined to the proceeding and which is determined by the Board without providing reasons except on request (at no additional fee). More complex modification applications may require more intensive case management and the determination will usually contain detailed reasons.



### 1.3.3 The Building Regulations Advisory Committee

#### 1.3.3.1 The role of the BRAC

Section 209 of the Act establishes the BRAC as an independent statutory body. The BRAC is made up of 16 members who are appointed by the Minister for Planning based on their expertise. Section 211 of the Act sets out the BRAC functions which involve:

- providing advice to the Minister on:
  - draft regulations prepared under the Act
  - the administration of the Act and the Regulations
  - the impact on the building regulations system
  - issues relating to the building permit levy
  - any matter referred to it by the Minister.
- the accreditation of building products, construction methods or designs, components or systems connected with building work. This process is summarised in section 1.3.3.3.

#### 1.3.3.2 The fees administered by the BRAC

One of the regulations prescribing fees listed under Regulation 286 is administered by the BRAC. The fees are outlined in Table 1-3. All fees are paid into the Building account of the Victorian Building Authority Fund.

Table 1-3: Regulation prescribing fees listed under Regulation 286 administered by the BRAC

Regulation	Fee type	Description
<b>Regulation 244</b>	Accreditation fees	Regulation 244(1) prescribes a fee for an application for an accreditation for a building product or renewal of that accreditation. The prescribed fee for an application or renewal is currently \$2,199.13 (138.31 fee units). Regulation 244(1A) prescribes a fee for the application to vary an accreditation, currently equal to \$329.93 (20.75 fee units).

Source: Deloitte Access Economics

#### 1.3.3.3 The accreditation of building products

The accreditation process verifies that a construction method, design component or system connected with building work (a building product) satisfies relevant performance requirements of the Regulations or the NCC. This product accreditation process is undertaken by the BRAC for innovative solutions, materials, products, form of constructions or designs which do not meet the deemed-to-satisfy provisions of the NCC. The BRAC building product accreditation system operates alongside the national product certification system, CodeMark, which is managed by the Australian Building Codes Board. The BRAC product accreditation is best suited to products that will only be used in Victoria, or whose initial marketing strategy is limited to Victoria.

In the last five years, eight building products have been issued with a BRAC Certificate of Accreditation. Many of these certifications of accreditation were issued for building products suitable for use as external wall cladding systems on exterior walls in residential Class 1 and 10 buildings and structures.<sup>13</sup>

This process involves the consideration and determination by the BRAC of applications for accreditation submitted by product owners (or the agent of an owner). This includes the assessment of any relevant test reports, appraisals or opinions submitted with the application. If the BRAC is satisfied that the product meets the performance requirements of the Regulations or the NCC, it is considered suitable for accreditation (subject to conditions). The BRAC will then issue the product owner with a Certificate of Accreditation. An accreditation (or renewal of an accreditation) remains valid typically

<sup>13</sup> The Victorian Building Authority. *Product Accreditation Register*. Accessed at <https://www.vba.vic.gov.au/building/building-regulations-advisory-committee/product-accreditation-register>.

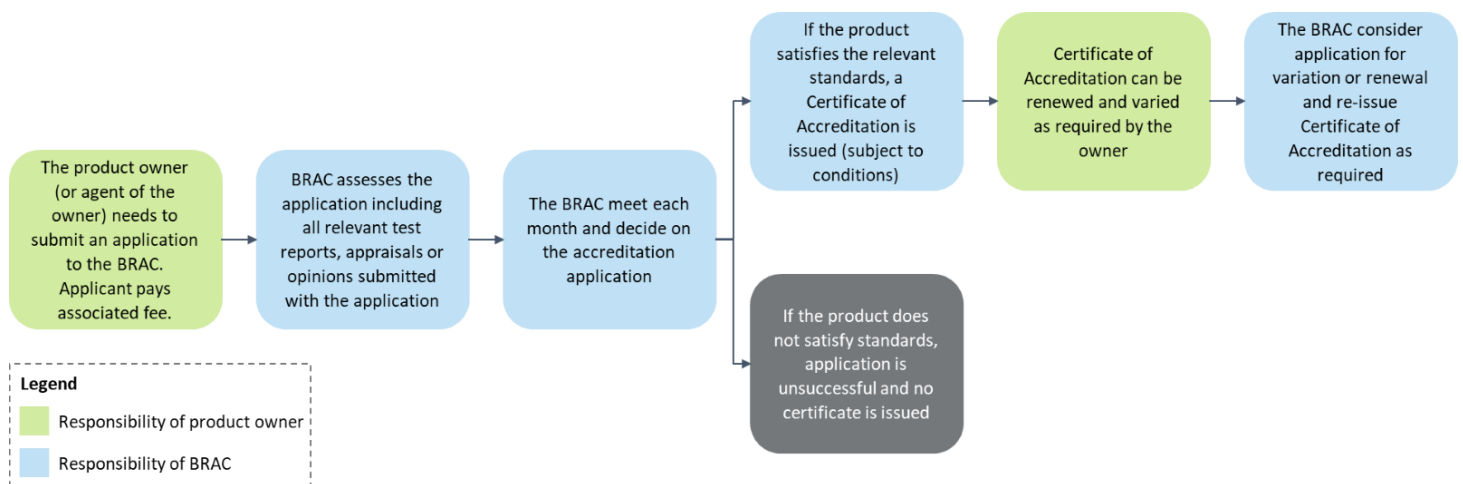
for a period of up to three years, which is specified by the BRAC in the Certificate of Accreditation.<sup>14</sup> An accreditation may be renewed or varied upon application to the BRAC (or varied by the BRAC in accordance with Regulation 242).

The Certificate of Accreditation is proof that a product meets the performance requirements of the Regulations or the NCC. Under section 15 of the Act, a building surveyor must accept the product, method, design, component or system if the use complies with the accreditation.

The product accreditation process is summarised in Figure 1-5.

The BRAC is also responsible for processing any complaints against accredited building products, however there is no fee associated with this activity. The BRAC also absorbs costs associated with accreditations that are not recovered through fees. These costs arise from committee-imposed variations to accreditations and engaging with external experts for decisions regarding accreditation revocations.

Figure 1-5: Building product accreditation process



Source: Deloitte Access Economics adapted from BRAC

### 1.3.4 Councils

#### 1.3.4.1 The role of councils in relation to building

Section 212 of the Act specifies that councils are responsible for the administration and enforcement of:

- building permits
- inspections of building work
- occupation of buildings and places of public entertainment
- protection of adjoining property
- enforcement of safety and building standards.

In Victoria, applications for building permit numbers are submitted to the VBA under section 18AA of the Act. The relevant building surveyor then reviews the applications and determines whether to issue a permit. This determination can be made by either a private building surveyor or a municipal (council) building surveyor (under section 19 of the Act).

Under section 30 of the Act, the relevant building surveyor, within 7 days of issuing a building permit, must provide to council a copy of the building permit as well as any plans or other documents lodged with the application for the permit.

Fees are charged to cover the regulatory costs associated with reviewing applications for permits. The Act and Regulations permit councils to impose fees for some building regulatory activities within its municipal district, including:

<sup>14</sup> The specified 3-year period that accreditation remains in force was introduced in 2020-21 through amendments to the *Building Act 1993*. Since this time, the BRAC have been undertaking a planned program of work to apply the 3-year expiry date to all certificates of accreditation.



- **responding to report and consent:** assessing and responding to private building surveyor requests for consent to carry out building works which:
  - involve demolition of a building
  - involve the installation or alteration of a septic tank system or the construction of a building over an existing septic tank system
  - do not meet siting requirements in the Regulations
  - are to be undertaken in designated special areas
  - have the potential to affect public assets, infrastructure and amenity
  - include a stormwater drainage system.
  
- **administration of building information:** maintaining building permit records, administering audits of building and building work and responding to requests for building information.

The Regulations prescribe time limits within which the relevant building surveyor must give a copy of an application to reporting authorities (3 to 5 business days depending on building class) and within which reporting authorities must supply a report or consent (within 10 to 15 business days depending on building class and the matter the report or consent relates to). Under clause 6 of Schedule 2 of the Act, a reporting authority is taken to have consented to a permit if the authority has not informed the relevant building surveyor within the prescribed timeframe of either its consent to the application or refusal of consent and the reasons for refusal.

#### 1.3.4.2 The fees administered by councils

Several regulations prescribing fees listed under Regulation 286 are administered by councils. These fees are outlined in Table 1-4.

Table 1-4: Fees listed under Regulation 286 administered by councils

Regulation	Fee type	Description
<b>Regulation 36</b>	Maximum fees for report and consent	<p>Regulation 36 prescribes a number of maximum fees relating to circumstances in which report and consent from the relevant council is required.</p> <p>Under the <i>Local Government Act 2020</i> councils may set their own fees in local laws for the services they provide, depending on the statutory function being undertaken. Under Schedule 2 of the Building Act, councils are able to determine fees relating to building permits (including report and consents). Therefore, Regulation 36 sets a <i>maximum</i> fee councils can charge for report and consents.</p> <p>The maximum fee payable for councils to consider report and consent applications varies based on what the matter involves (e.g. demolition, stormwater drainages, septic tank systems, close proximity to transport infrastructure). Therefore, the prescribed maximum fees currently range between \$87.92 and \$304.27 (5.75-19.9 fee units).</p>
<b>Regulation 45</b>	Lodgement fees	Regulation 45 prescribes a fee for the lodging of documents with council by the relevant building surveyor under section 30 of the Act. The prescribed fee is currently \$125.84 (8.23 fee units).
<b>Regulation 52</b>	Fees for requests for information	Regulation 52 prescribes a fee for any requests to council for information relating to any building or land. The prescribed fee for such requests for information is currently \$48.78 (3.19 fee units).



Source: Deloitte Access Economics

### 1.3.4.3 Processing report and consents

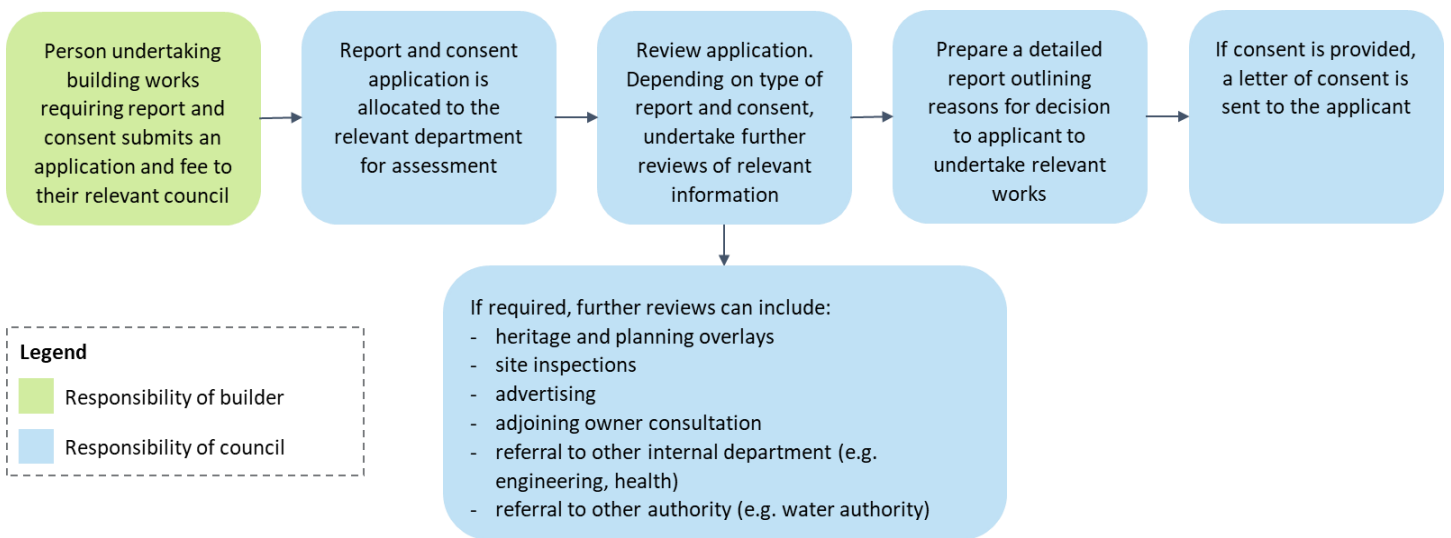
Report and consent is the process of consulting with and obtaining approval from a council for building works which differ from siting requirements in the Regulations, or which may affect public assets, infrastructure or amenity. As outlined in section 1.3.4.1, report and consents are required for a number of matters, and the administration process councils undertake can differ depending on the type of report and consent, and the individual processes in place across different councils.

Appendix B provides a summary of stakeholder consultations, including insights on drivers of variance for report and consent applications. Key drivers in variation for processing include:

- whether there is a need for a site inspection
- planning overlays in the Local Government Area
- level of expertise required for an assessment
- differing processes for obtaining consent from parties or dealing with objections
- varying levels of effort based on different assessments of risk and prioritisation of available resources.

While processing does vary depending on the particular report and consent and the above factors, stakeholder consultation with councils highlighted a number of common processing steps across councils. These generic steps are highlighted in Figure 1-6 below.

Figure 1-6: Report and consent process



Source: Deloitte Access Economics

### 1.3.4.4 Accepting and storing building permit documentation

Building surveyors are required to lodge planning and building permit documentation with the relevant council, within seven days of issuing a building permit. Councils must keep these documents, and any variations or amendments to these documents, in accordance with the *Public Records Act 1973* until the building is demolished or removed from the land allotment.

As with all council processes, the process for lodging documents varies across councils in Victoria, however it is commonly a largely administrative process which does not vary significantly in terms of complexity (see Appendix B). Typically, when documents are lodged with councils, the responsible team will need to locate the relevant section 80 information in their system to link the documents to, check the accuracy and completeness of the documents received, and lodge the documents into the system.<sup>15</sup> Instances where the processes for lodging documents vary include when information provided

<sup>15</sup> Section 80 of the *Building Act 1993* requires a private building surveyor to, within 7 days of appointment, notify the relevant council in writing of the appointment and the building or building work the private building surveyor is appointed to oversee.



is incorrect or incomplete and building surveyors need to be followed up, or when any variations or amendments to already submitted permits are lodged.

### 1.3.4.5 Responding to requests for information

Councils are required to respond to requests for information submitted by any person in relation to any building or land, including information on details of any permit or certificate of final inspection, allotment changes or subdivisions, building notices or orders, any designated areas (such as flooding, termite, bushfire or snowfall areas), or inspection dates for mandatory notification stages of works.

As with all council processes, the process for retrieving information and sending responses to requests for information vary, however it is commonly a largely administrative process which is not complex (see Appendix B). Typically, once a request for information form is submitted to a council, an administrative team will search databases for the relevant information, retrieve or order the relevant documents or files required, complete a property information certificate, and send the certificate to the applicant. For information relating to designated areas, overlays on the land will need to be checked and referrals for information from other council departments (such as engineering) may be required. For information relating to inspections, dated information is often required to be recalled which can sometimes involve retrieving files from offsite storage.

## 1.4 The Victorian Government’s pricing principles

The Victorian Government’s *Pricing for Value* guide introduces pricing principles which build upon the previous guidelines to go beyond cost recovery. The guide provides a rigorous framework for use by government entities when considering, developing and reviewing user charges and regulatory fees, and seek to ensure cost recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and government policy.<sup>16</sup>

Under this framework cost recovery is one principle among a broader range of 12 pricing principles. These include potential scenarios where setting prices of individual regulatory activities at, above, or below the cost of those activities may be warranted (e.g., by setting prices above cost in order to send price signals to regulated parties about the higher risks associated with the activities that they undertake, or by setting prices below cost to avoid creating a barrier to entry or unintended negative consequences).

By design, the *Pricing for Value* Pricing Principles are flexible and able to be applied in a wide range of scenarios, from the State’s provision of services to industry managed co-regulatory schemes. For simplicity in this RIS, Table 1-5 provides a summary of the key pricing principles considered, and their interpretation, in the context of remaking the fees under the Regulations. These pricing principles have been used to guide DTP’s fees review and will underpin the analysis of options in this RIS.

Table 1-5: Pricing Principles and their relevance

Pricing Principle	Relevance
<b>Pricing Principle 1: Prices should reflect costs</b>	The pricing of fees should reflect the costs associated with providing the regulatory services for which it is collected. Full cost recovery promotes the efficient consumption and provision of these regulatory services. For example, applications for appeals, building product accreditations and certificates of consent.
<b>Pricing Principle 2: Costs should be recovered from those who benefit from or trigger the need for regulation</b>	To encourage efficient consumption and provision of regulatory services, the costs should be borne by those who benefit from or create the need for them. This is relevant for most of the fees prescribed in the Regulations and listed under Regulation 286 which involve applications for specific processes required by some but not all of the building industry. For example, the cost associated with making an appeal or the costs associated with obtaining a report and consent or product accreditation.

<sup>16</sup> Victorian Department of Treasury and Finance, *Indexation of fees and penalties* < <https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties>>.



**Pricing Principle 5: The price of services should not limit access to those with a lower ability to pay**

The value at which a fee is set should not restrict certain individuals or businesses from accessing the regulatory service and should instead promote equity across user groups. While relevant for most fees under the Regulations, this is particularly important regarding the fees associated with applications for appeals to the BAB so as to not restrict any individuals from access to justice.

**Pricing Principle 6: Users should pay for differentiated service based on the value created by that differentiation**

In some cases, regulatory services may differ to allow for additional value to be provided to users. In these instances, it is suggested that the users of these differentiated services should pay for the additional value they provide. This is particularly relevant for fees administered by the BAB which allows for fast-track appeals under certain circumstances.

**Pricing Principle 7: The public should share in the value generated by pricing based on user differentiation**

This principle acknowledges variation across the building industry in relation to individuals' willingness and ability to pay, their risk profile and other relevant characteristics. Fees may be differentiated to capture any additional regulatory costs created by this variance. For example, some applications processed by councils may be more complex than others based on whether or not the building activity is related to commercial or residential work. More complex applications may require an increased amount of time and effort from local councils to assess and administer, and therefore may be associated with a higher cost.

**Pricing Principle 8: Pricing should support positive behaviours**

In pricing the regulatory activities associated with the fees prescribed in the Regulations and listed under Regulation 286, the fees must encourage positive behaviour or actions from the regulated parties, such as compliance. This should be done in a way that considers and minimises unintended consequences and ensures that activity is not being driven underground.

**Pricing Principle 11: Pricing structures should be easy to understand**

The fee structure should be easy for users to understand and simple for the fee-collecting entity to administer. Where possible, simple and clear schedules of fee types can reduce complexity, decreasing the amount of time spent making applications. This may include for example, the time and effort associated with applying for certificates of consent, appeals or product accreditation.

## 1.5 About the RIS

This RIS has been prepared in accordance with the Victorian Guide to Regulation, which provides a best practice approach to analysing any proposed regulatory intervention. This RIS estimates the impact of the proposed Regulations on Victorian businesses and community.

Key steps in the process to introduce the proposed Regulations are:


- preparation of the RIS (this document),
- public comment on the proposed Regulations, and
- addressing public comment.

The key purpose of this RIS is to assess the impact of different options for the building fees structure. The general approach to the assessment is as follows:

### Identification of the nature and extent of the problem

This involved consideration of the nature and extent of the problem that the proposed Regulations aim to address, including the need for government to recover costs, the risks of non-intervention and the objectives of such intervention.

### Stakeholder consultations



Stakeholder consultation was undertaken with all fee collecting entities to understand their revenue and costs bases related to processing applications which attract a fee. Stakeholder consultation included data collection from the fee collecting entities, as well as workshops to further understand drivers and variance in costs. See Appendix B for a summary of stakeholder consultation and findings.

### **Identification of the options to achieve the objectives of the proposed Regulations**

Following stakeholder consultation and analysis of data, options were developed in collaboration the VBA, BAB and BRAC, and councils, which would achieve the objectives of the Regulations and align with the Pricing for Value Pricing Principles.

### **Assessment of the costs and benefits**

Consideration of the costs and benefits under all options, relative to the base case, was undertaken pursuant with the requirements of the Victorian Guide to Regulation. The analysis included the consideration of benefits to building professionals, building owners and to the Victorian community. It also considers the costs to government of implementing and administering regulations. The analysis reflects data and information held by DTP and provided by stakeholders.

### **Assessment of the other impacts**

The likely impacts of the preferred option on small businesses and general competition among firms have been considered. This part of the RIS draws on stakeholder consultations.

### **Implementation, enforcement and evaluation**

These sections describe the arrangements for implementation, enforcement and evaluation of the preferred option.

#### **1.5.1 Public comment**

The proposed Regulations and this RIS will be released via Engage Victoria for a 28-day public comment period to provide practitioners, industry bodies, other interested parties and members of the public with the opportunity to consider and provide feedback on the proposed Regulations and RIS.

All submissions received during public consultation will be carefully considered. DTP will prepare a formal Response to Public Comment document which will detail the submissions received and the response to issues raised in the submissions.

## **1.6 Structure of the report**

This structure of the remainder of the report is as follows:

- Chapter 2: The problem
- Chapter 3: Fee cost base
- Chapter 4: Identification of options
- Chapter 5: Options analysis
- Chapter 6: Competition and small business impacts
- Chapter 7: Implementation and evaluation





# 2 The problem

This chapter outlines the nature and extent of the problem, establishing the need for fees under the Regulations.

## 2.1 Broad benefits of building regulation

Building professionals, building owners and the broader community benefit from effective regulation as they can buy, live in, lease or sell buildings with confidence that they are of a high quality and safe to inhabit. Regulatory oversight of the building industry seeks to provide consumer protection and uphold a safe, thriving industry. A well-regulated and functioning building industry can give consumers confidence that buildings will be constructed without the need for rectification of building faults or defects, which can inflict financial and mental stress on consumers. Providing avenues to hear appeals and disputes also provides consumers with confidence that any issues relating to building work can be resolved. Rigorous regulatory activities that ensure buildings are safe and fit-for-purpose also reflect positively on the registered builders who construct them.

The fees prescribed in the Regulations and listed in Regulation 286 involve a range of functions under the 2018 Regulations, which largely relate to stakeholders' rights in the building process, including:

- owners' right to apply for consent from the VBA to conduct domestic building works
- stakeholders' right to apply for reports and consents from Councils
- stakeholders' right to request information relating to buildings and land
- stakeholders' right to appeal or dispute decisions (with the option to fast-track these processes)
- stakeholders' rights to apply for product accreditation.

While effective building regulation broadly benefits the community at large, individual regulatory activities and services are often undertaken for individual buildings, the owner-builder or the building practitioners responsible for them (and their customers), and product owners. This suggests that the individual owner-builders, building practitioners and customers, and product owners immediately benefit from regulatory activities and services (either directly or on behalf of their clients) and should therefore bear the direct costs associated with them.

## 2.2 The problem if the fee regulations are not remade


If government does not revoke Regulation 286, the entities that undertake the corresponding regulatory activities in relation to the fees prescribed in the Regulations and listed under Regulation 286 would have fewer resources to undertake these activities. In this situation, regulatory entities would need to seek alternative sources of funding and/or conduct their regulatory activities with fewer resources, which could compromise the ability of the entities to fulfil their statutory requirements and, consequently, the effectiveness of the Regulations.

Should the fees prescribed in the Regulations and listed in Regulation 286 be revoked but the requirement for regulatory activities remain, this would shift the cost burden of regulatory activities from beneficiaries to another stakeholder. State government regulatory entities would likely require additional funding through the appropriation of consolidated revenue in the state budget or from other sources.<sup>17</sup>

Council-administered regulatory activities would also likely need to be resourced through increased or reallocated council revenue. Adding the costs of building regulatory activities to these budgets would increase the overall financial burden on the state government and councils, given these costs could be recovered from beneficiaries through fees. This was noted during stakeholder consultation with councils suggesting that without the revenue collected from these fees there would be a significant impact on council resources, budget and levels of service (especially in other areas such as enforcement) and building and development costs would likely end up being subsidised by ratepayers. Importantly, councils noted that in particular their ability to process report and consent applications within the statutory timeframes would be limited. This could lead to consent being granted without the council having assessed the application, or to increased pressure on councils to process applications quickly, which could result in errors or compromise safety, such as buildings on areas liable to flooding, amenity issues for adjoining properties, or the demolition of significant structures. Councils also noted

---

<sup>17</sup> For example, the VBA recovers a significant proportion of its costs through the Building Permit Levy (BPL). While the BPL is not a part of consolidated revenue, it may need to be increased to cover the cost of regulatory activities should a fee structure not exist.



that without these fees there would be a further reduction in their ability to make processes more efficient, such as automation and digitisation of processes and development of online self-serve portals.

While the community does benefit from building regulation activity in broad terms, appropriation does not specifically attribute the cost of regulatory activities to their chief beneficiary (consumers, compliant building practitioners, building owners and product owners). Conversely, funding regulatory activities through appropriation would have a cross-subsidisation effect as the broader community is effectively paying for the benefit that users (such as building owners exercising their right to apply for a report and consent from Council or compliant building practitioners and product owners) receive from regulation. In this way, appropriation does not align with the 'beneficiary pays' pricing principle to the extent that imposing fees does. This reflects the need for fees as a tool for recovering the costs of regulatory activities from the beneficiaries of those activities.

In the event that alternative equivalent funding is not readily available from alternative sources, the level of associated regulatory effort would likely decline, resulting in lower quality regulatory activity and/or longer timeframes for processing given a decline in adequate resourcing to meet ongoing demand for services.

These scenarios each undermine building regulation's overall effectiveness, which in turn would detract from its objectives and reduce its benefits to the community.

It is worth noting that the current fees prescribed in the Regulations and listed under Regulation 286 do not fully recover the costs associated with the regulatory activity undertaken by each fee-collecting entity and are insufficient to fund the level of regulatory oversight commensurate with the sustained and near-term expected growth in the building industry (see Chapter 3).

## 2.3 Objectives

The fees prescribed in the Regulations and listed under Regulation 286 seek to ensure that effective and efficient regulation of building activities in Victoria is promoted.

Within this broader objective, specific objectives include:

- **Effective and efficient** - fees are effective in collecting sufficient revenue to support the necessary regulatory activities and services undertaken by each of the fee collecting entities in efficiently fulfilling their statutory requirements. Fees seek to promote the efficient consumption of the regulatory services, while not leading to any unintended consequences. This objective aligns with Pricing Principles 1 and 8.
- **Equitable** - fees support equity by seeking to recover costs from those who give rise to the need for the regulatory activities and acknowledge different users' ability to pay and right to access to justice. This objective aligns with Pricing Principles 2, 5, 6 and 7.
- **Simple** - fees are simple for users to understand and for fee collecting entities to administer. This objective aligns with Pricing Principle 11.



# 3 Fee cost base

This chapter sets out the current cost base for regulatory activities which relate to fees prescribed in the Regulations and listed under Regulation 286. These cost bases are discussed for each fee raising entity.

## 3.1 Costing methodology

### 3.1.1 Establishing the VBA, BAB and BRAC cost base

The cost bases related to the regulatory activity associated with the fees prescribed in the Regulations and listed under Regulation 286 were established for each of the VBA, BAB and BRAC using a top-down cost attribution approach. The direct costs related to undertaking the relevant regulatory activities were provided for FY 2022-23 by each of the entities, as well as the attributable indirect support costs.

### 3.1.2 Establishing councils cost base

All 79 councils in Victoria were invited to provide cost data. Of these, 38 councils provided responses. Councils provided estimates of the minimum, average and maximum time to undertake the regulatory activities, as well as the range of labour costs associated with them. Councils were also invited to provide a total budget for the working team responsible for processing these applications, along with any overheads and other costs.

Councils were given the opportunity to expand on the following cost themes in qualitative discussion:

- key steps undertaken to process applications
- factors which drive variance or complexity in the administration of applications
- expected forecast volumes of applications in the next five years.

The existing cost base for councils was developed using a top-down approach, with the option of analysing cost data for each individual fee where councils provided it. Councils' submissions were aggregated across fee types and in total. These totals were averaged to provide an indicative cost base for a broadly representative council.

### 3.1.3 Estimating the future cost base

Forecast costs for each entity were estimated for the next five financial years, up to 2027-28, using an assumed growth in the volume of building works over the same period and applying an annual weighted average of the Consumer Price Index (CPI) from the previous five years.

## 3.2 Current and future cost base

### 3.2.1 Victorian Building Authority

Direct costs provided by the VBA include direct staff costs to process applications and respond to enquiries through the VBA's call centre, the ongoing costs to maintain the online platform through which applicants submit owner-builder certificate of consent applications, and the digital learning portal to undertake owner-builder training and assessment. Support costs include corporate services, human resources, technology, and governance.

The current and forecast annual average cost base for the VBA, in relation to the fees prescribed in the Regulations and listed under Regulations 286 are outlined in [Table 3-1](#).

Table 3-1: Current and forecast annual cost base for the Victorian Building Authority

Cost category	2022-23 cost base	Forecast annual average (FY24 to 28)
Direct costs	\$683,000	\$761,000
Support costs	\$199,000	\$222,000
<b>Total</b>	<b>\$882,000</b>	<b>\$983,000</b>

### 3.2.2 Building Appeals Board

Direct costs provided by the BAB include Board members cost for time spent in hearing and making determinations for BAB proceedings and registry staff costs to process and manage applications and schedule hearings for appeals, referrals and modifications. Support costs include corporate services, human resources, technology and systems, and governance.

Detailed activity-based costings were also provided by the BAB from a 2019 review. This data was used to determine the proportion of total costs attributable to each fee type administered by the BAB. These proportions were then applied to the top-down cost data provided by the BAB to determine the likely costs between fee categories in FY 2022-23.

The current and forecast annual average cost base for the BAB, in relation to the fees prescribed in the Regulations and listed under Regulations 286 are outlined in Table 3-2.

Table 3-2: Current and forecast annual cost base for the BAB

Cost category	2022-23 cost base	Forecast annual average (FY24 to 28)
Direct costs	\$2,257,000	\$2,515,000
Support costs	\$611,000	\$681,000
<b>Total</b>	<b>\$2,868,000</b>	<b>\$3,196,000</b>

### 3.2.3 Building Regulation Advisory Committee

Direct costs provided by the BRAC include costs associated with BRAC member remuneration, a BRAC Executive Officer and the provision of expert advice. Support costs were not provided for the BRAC given the relatively low revenue received in relation to these fees and the disproportionate effort that would be required to calculate the support costs. BRAC estimates of the total cost associated with assessing applications for accreditation in FY 2022-23 were attributed across the volume of activities to derive an average cost. The BRAC also provided the average cost of the activities associated with one instance of their fee-incurring activities. This enabled a sense check of the top-down approach to reinforce the approximate total cost base.

The current and forecast annual average cost base for the BRAC, in relation to the fees prescribed in the Regulations and listed under Regulations 286 are outlined in Table 3-3.

As previously noted, the BRAC's costs vary significantly according to the volume and nature of applications it receives. As the volumes for applications assessed by the BRAC are very low,<sup>18</sup> each instance of activity has a material impact on its overall cost base, significantly varying the BRAC's average costs. This precludes the calculation of an analytically robust forecast of future costs. While this represents a limitation to the overall analysis of fees administered by the BRAC, their observed costs provide some indication of scale. Allowing for an apparent outlying cost amount in 2021-22, the average BRAC costs for the last three financial years is \$90,151, which is based on an average of two applications being assessed for accreditation per year.

<sup>18</sup> There has been an annual average of two applications for accreditation over the previous four years. BRAC only commenced renewal of accreditations in FY 2022-23 and received one application for accreditation renewal in the first half of the financial year. Fee options in Chapter 4 are therefore based on an average of four applications to the BRAC per year.

Table 3-3: Current and forecast annual cost base for the BRAC

	2022-23 cost base	Forecast annual average (FY24 to 28)
Total cost	\$101,000	\$112,000

### 3.2.4 Councils

While 38 councils (47 per cent) provided responses to the revenue and cost data request distributed through Council CEOs, some data gaps or uncertainties were apparent and only 17 of the datasets provided enough information to ascertain council's cost base in relation to the fees prescribed in the Regulations and listed under Regulation 286. Gaps and uncertainties in the council data provided included:

- **Estimates of costs not being provided or known by councils.** Approximately half of the responding councils were unable to provide all the relevant cost data to support an understanding of the overall level of cost-recovery for these fees in aggregate. This was either due to councils not knowing these costs, or not having the resources available to estimate these costs within the required time period for data collation.
- **Uncertainty regarding the accuracy of cost data.** Several councils noted qualitatively that it is difficult to accurately calculate the costs of delivery across fee types. This is predominantly due to councils' operational structures, where the relevant areas responsible for delivering fee-incurring activities are also responsible for other municipal building surveying tasks.
- **Significant variations in costs across councils.** The data suggested there are significant variations in cost-base responses from councils for each of their three fee types. This variability appeared to be primarily driven by:
  - a) individual processes and requirements for each fee type. For example, councils' reliance on automated and electronic systems to support lodgement and processing activities varies across the population sample.
  - b) potential complexity of individual applications. For example, commercial applications are estimated to be more time consuming and in turn costly to administer than residential applications.
  - c) significant variations in underlying drivers of activity across councils. For example, the travel times to undertake regulatory activities according to council boundaries.

For these reasons, it was not feasible to arrive at an observed 'efficient' cost for these activities. However, the observed average costs per council (based on the cost data provided by councils) is shown in Table 3-4.

Table 3-4: Indicative average current cost base per council for council-administered fees

Cost category	Observed average 2022-23 cost base per council	Forecast annual average (FY24 to 28)
Report and consent	\$325,000	\$362,000
Requests for information	\$111,000	\$123,000
Lodgement fees	\$138,000	\$154,000
<b>Total</b>	<b>\$574,000</b>	<b>\$639,000</b>

Applying this average cost across the 79 councils in Victoria, the total council cost base for regulatory activities associated with council fees listed under Regulation 286 is estimated to be approximately \$45 million in 2022-23.

## 3.3 Current cost recovery levels

The current levels of cost recovery for each fee collecting entity (for regulatory activities related to the fees prescribed in the Regulations and listed under Regulation 286) and the revenues these fees collect are shown in Table 3-5. This table also highlights the level of cost recovery each fee collecting entity currently achieves.



Table 3-5: 2022-23 cost recovery for fee collecting entities

Cost category	VBA	BAB	BRAC	Councils (average)
Total costs	\$882,000	\$2,868,000	\$101,000	\$574,000
Total revenue	\$568,000	\$246,000	\$2,100	\$597,000
<b>Recovery</b>	<b>64%</b>	<b>9%</b>	<b>2%</b>	<b>104%</b>

Table 3-5 suggests that the current fees function with widely varying levels of effectiveness with respect to cost recovery. The variation across entities presents a need to tailor prospective fee options to each entity's current level of cost recovery.



# 4 Identification of options

This chapter identifies the options for fee structures and levels for each of the entities which administer the fees listed under Regulation 286.

## 4.1 Approach to options development

The approach to developing options was informed by a preliminary stakeholder engagement process and a review of readily available cost recovery data. Stakeholders from Victorian councils, the VBA, BAB and BRAC were engaged to provide the necessary context and discussion of the relevant considerations for developing fee options. The available data pertaining to fee administrators' volumes, costs and revenues associated with each in-scope activity provided an indication of existing cost recovery levels.

The combined qualitative information from the stakeholder engagement process and stakeholders' quantitative datasets allowed for consideration of current cost recovery levels and exploration of opportunities for the fee structures to be differentiated or streamlined depending on relative levels of administrative effort. Options were further refined to align with the relevant pricing principles, which are reflected in the options assessment criteria.

## 4.2 Rationale for recovering costs

The primary objective in resetting fees is to ensure that fee-administering entities can effectively deliver their regulatory services to protect the community and promote the integrity of the building industry through effective and efficient regulation.

As noted in Chapter 2 and outlined in detail in Chapter 3, the current fee revenues do not fully recover the costs associated with the regulatory activity undertaken by each fee-collecting entity (see Table 3-5).

## 4.3 The base case

The base case is the scenario that would arise if no action were taken and the fees prescribed in the Regulations and listed under Regulation 286 are revoked on 1 July 2024.

### 4.3.1 VBA, BAB and BRAC

Under the base case, the VBA, BAB and BRAC administered fees affected by the revocation provision in Regulation 286 would no longer apply. This would mean that these entities would not be able to charge a fee to recover the costs associated with the required regulatory activities or functions. As the Regulations to be revoked only relate to fee amounts and not the regulatory activity or function itself, another funding source would need to be established to deliver the regulatory services or functions, such as consolidated revenue in the state budget. Alternative sources would be via building permit levy or consolidated revenue through state appropriations, if the fees prescribed in the Regulations and listed under Regulation 286 are revoked.

The base case would impact each fee administering entity to different extents. As identified in section 3.2, there is wide variation in the costs, revenue and cost recovery levels between the entities. However, each entity's ability to provide regulatory activities to the building industry would be reduced without a mechanism for recovering their costs. Therefore, this RIS does not consider the base case as a viable option.

### 4.3.2 Councils

The council-administered fee for report and consent activities under Regulation 36 would be altered, but not removed by the enactment of Regulation 286. As outlined in section 1.3.4.2, the *Building Act 1993* provides councils with a head of power to charge fees for report and consent activities. Regulation 36 prescribes the maximum amount that councils may charge. In the absence of a prescribed maximum fee amount, councils would notionally be able to charge a fee amount in accordance with the *Local Government Act 2020* for the activities outlined in Regulation 36.

For the fees associated with the lodgement of building documents (Regulation 45) and requests for information (Regulation 52), Regulation 286 would revoke these fees and funding for these regulatory activities would need to come from an alternative source, such as consolidated revenue.<sup>19</sup>

#### 4.4 Summary of options – VBA

The options for the VBA fees prescribed in the Regulations and listed under Regulation 286 are described below and outlined in Table 4-1.

Under all options there is no increase proposed for the duplicate certificate fee. This is because the duplicate certificate fee currently recovers associated administrative costs for the VBA, and these are relatively low volume applications with minimal associated revenue.

##### Option 1 – Status quo

Option 1 proposes to remake the current fee structure with the existing fee level. Cost and revenue data from the VBA indicates that these fee settings recover approximately 64 per cent of regulatory costs associated with owner-builder applications.

##### Option 2 – Full recovery of current costs

Option 2 proposes the current single fee structure be retained but the owner-builder certificate of consent fee level is increased to fully recover the VBA's current regulatory costs associated with assessing and approving applications. This involves a flat fee increase of 55 per cent based on the last five financial years' costs and revenue data.

##### Option 3 – Full recovery of current and future costs

Option 3 proposes the current single fee structure be retained but the owner-builder certificate of consent fee level is increased to fully recover the VBA's current regulatory costs, as well as the future anticipated costs likely to be incurred in reviewing, upgrading and maintaining the digital learning portal and assessment content.<sup>20</sup> This involves a flat fee increase of 109 per cent based on the last five financial years' costs and revenue data.

Table 4-1: Summary of fee options for the VBA. Fee values presented below are based on 2023-24 fee units, which are subject to annual indexation

		Option 1 – Status quo		Option 2 – Full recovery of current costs		Option 3 – Full recovery of current and future costs	
Regulation		Fee unit	Fee value (2023-24)	Fee unit	Fee value (2023-24)	Fee unit	Fee value (2023-24)
18	Owner-builder certificate of consent	6.90	\$109.71	10.70	\$170.13	14.42	\$229.28
266	Duplicate certificate fee	2.75	\$43.73	2.75	\$43.73	2.75	\$43.73

<sup>19</sup> The extent to which councils are able to make a local law which imposes a fee under the *Local Government Act 2020* needs to be considered on a case-by-case basis. For the purposes of analysis in this RIS, it is assumed that councils would not be able to charge a fee relating to the lodgement of documents or requests for information if no fee is prescribed in the Regulations.

<sup>20</sup> While a base level of maintenance of the digital learning portal is included in the VBA's current cost base as support costs, additional investment is required for the ongoing review and upgrading of the digital learning portal and assessment content to reflect the regular and periodic changes to regulatory requirements (including NCC requirements) that owner-builder applicants are expected to meet. These additional costs are difficult to forecast as the amount of changes involved would depend on the extent of regulatory changes (including NCC changes) in the future.



## 4.5 Summary of options – BAB

The options for the BAB fees prescribed in the Regulations and listed under Regulation 286 are described below and outlined in Table 4-2.

### Option 1 – Status quo

Option 1 proposes to remake the current fee structure with the existing fee levels. Cost and revenue data from the BAB indicates that these fee settings recover approximately 9 per cent of regulatory costs on average.

### Option 2 – Increase fees to reach full cost recovery

Option 2 sets fee levels based on achieving full cost recovery, with fees increased to fully recover the BAB's corresponding regulatory costs. This involves an increase to fees ranging from a 32 per cent increase to a 1,733 per cent increase. The significant increase in fees under this option would be necessary to recover the full cost of BAB services, which are currently only recovered at 9 per cent.

### Option 3 – Targeted increase in fees closer to full cost recovery

Option 3 proposes to modify the existing fee structure of imposing fees for the BAB's activities pertaining to appeals (including fast-track appeals), referrals and applications, stratified by building classification and by application type. This stratification of fees seeks to recover costs from those who generate the need for and benefit from the services provided by the BAB, in line with Pricing Principle 2. Option 3 proposes separate fee levels according to:

- **the activity under the Act:** fees are stratified according to which activity under the Act is being undertaken namely appeals, referrals and applications (this stratification reflects the current approach)
- **the building's classification under the National Construction Code:** fees are stratified according to whether the activity relates to classes 2 to 9 buildings or class 1 or 10 buildings (this stratification reflects the current approach but at different levels of recovery).

This option introduces one additional fee under section 160A of the Act, allowing for fees for applications to assess the compliance of a building design to be stratified according to whether the application relates to a Class 2 to 9 building, or a Class 1 or 10 building, with a lower fee applying for applications related to a Class 1 or 10 building.

This option involves an increase to fees ranging from a 3 per cent increase to a 450 per cent increase. Under this option, the BAB's aggregate level of cost recovery would increase from 9 per cent to 29 per cent. This option would increase fees to bring them closer to full cost recovery but would not fully recover costs in order to balance the imperative of maintaining fees at levels that do not materially impact users' equitable access to justice (particularly those with a lower ability to pay). The most significant increase under this option would be for applications under section 160A of the Act to assess the compliance of a building design for a Class 2 to 9 building.



Table 4-2: Summary of fee options for the BAB. Fee values presented below are based on 2023-24 fee units, which are subject to annual indexation

<b>Regulation</b>	<b>Building Class</b>	<b>Activity (refer to the Act)</b>	<b>Option 1 – Status quo</b>		<b>Option 2 – Full cost recovery</b>		<b>Option 3 – Targeted increase in fees closer to full cost recovery</b>	
			<i>Fee unit</i>	<i>Fee value (2023-24)</i>	<i>Fee unit</i>	<i>Fee value (2023-24)</i>	<i>Fee unit</i>	<i>Fee value (2023-24)</i>
<b>272 – Appeals</b>	2-9	ss. 138, 138A, 140, 141, 142	46.10	\$732.99	472.99	\$7,520.57	70.95	\$1,128.09
		ss. 139, 144, 144A	23.04	\$366.34	236.39	\$3,758.65	47.28	\$751.73
	1,10	ss. 138, 138A, 140, 141, 142	23.04	\$366.34	236.39	\$3,758.65	35.46	\$563.80
		ss. 139, 144, 144A	13.82	\$219.74	141.79	\$2,254.54	28.36	\$450.92
<b>273 – Fast track appeals</b>	All	s. 147(1)	36.88	\$586.39	378.39	\$6,016.46	75.68	\$1,203.31
	All	s. 147(3)(b)	14.75	\$234.53	151.34	\$2,406.26	15.13	\$240.57
<b>272 -Referrals</b>	2-9	ss. 151, 152, 153, 154, 155, 156, 157, 158	46.10	\$732.99	806.35	\$12,820.98	80.64	\$1,282.18
		s. 150	23.04	\$366.34	403.00	\$6,407.71	60.45	\$961.16
	1,10	ss. 151, 152, 153, 154, 155, 156, 157, 158	23.04	\$366.34	403.00	\$6,407.71	40.30	\$640.77
		s. 150	13.82	\$219.74	241.73	\$3,843.51	36.26	\$576.53
<b>272 – Applications</b>	2-9	s. 159	46.10	\$732.99	402.95	\$6,406.90	80.59	\$1,281.38
		s. 164	23.04	\$366.34	201.39	\$3,202.06	50.35	\$800.57
		s. 160	18.43	\$293.04	161.09	\$2,561.37	80.55	\$1,280.75
	1,10	s. 159	23.04	\$366.34	201.39	\$3,202.06	40.28	\$640.45
		s. 164	13.82	\$219.74	120.80	\$1,920.68	30.20	\$480.18
		s. 160	8.29	\$131.81	72.46	\$1,152.13	36.23	\$576.06
<b>272 - Compliance assessment – building design</b>	2-9	s. 160A	18.43	\$293.04	337.91	\$5,372.83	101.37	\$1,611.78
	1,10	s. 160A					40.55	\$644.75
<b>272 - Modification – disability access</b>	All	s.160B	41.89	\$666.05	55.31	\$879.40	55.31	\$879.43

## 4.6 Summary of options – BRAC

The options for the BRAC fees prescribed in the Regulations and listed under Regulation 286 are described below and outlined in Table 4-3. Under all options there is no increase proposed for the fee for applying to vary an accreditation given the very low volume of these types of applications.

### Option 1 – Status quo

Option 1 proposes to remake the current fee structure with the existing fee levels. Cost and revenue data from the BRAC indicates that these fee settings recover approximately 2 per cent of regulatory costs on average. However, the BRAC receives a very low volume of applications. This means that the cost recovery proportion is highly sensitive to changes in the volume of applications it receives.

### Option 2 – Raise fees to achieve full cost recovery

Option 2 proposes the current fee structure be retained but the fee levels be adjusted to reflect the cost associated with service provision. This option results in a flat fee increase of 1,077 per cent according to the observed cost base. The significant increase in fees under this option would be necessary to recover the full cost of BRAC services, which are currently only recovered at 2 per cent.

### Option 3 – Partial cost recovery

Option 3 proposes the current fee structure to be retained but the fee levels be adjusted to recover 80 per cent of the cost to the BRAC associated with service provision. This option results in a flat fee increase of 841 per cent according to the observed cost base. The significant increase in fees under this option would be necessary to recover a greater proportion of the BRAC's cost base, which is currently only recovered at 2 per cent, but seeks to moderate the impact on applicants by not targeting full cost recovery.

Table 4-3: Summary of fee options for the BRAC. Fee values presented below are based on 2023-24 fee units, which are subject to annual indexation

Regulation	Option 1 – Status quo		Option 2 – Full cost recovery		Option 3 – Partial cost recovery	
	Fee unit	Fee value (2023-24)	Fee unit	Fee value (2023-24)	Fee unit	Fee value (2023-24)
<b>244 (1)</b> Accreditation (or renewal of accreditation) application	138.31	\$2,199.13	1,627.27	\$25,873.57	1,301.82	\$20,698.86
<b>244(1A)</b> Variation of accreditation application	20.75	\$329.93	20.75	\$329.93	20.75	\$329.93

## 4.7 Summary of options – Councils

The options for the council fees listed under Regulation 286 are described below and outlined in Table 4-4.

Under all options there is no increase proposed for the fee for lodgement of building documents and requests for information. This is because data and information collected through consultation with councils showed that revenue received in relation to lodgement of building documents and requests for information recover the costs to councils associated with processing these types of applications (on average) and that there is not a significant variation in the costs incurred by a council to process these types of applications (although there is still variation in the costs incurred between councils). DTP considered an option to stratify fees relating to the lodgement of documents to prescribe a lower fee for documents related to Class 1 and 10 building works and a higher fee for documents related to Class 2-9 building works, however council feedback during stakeholder consultation advised that this would not necessarily provide a more cost reflective option and that the simplicity of a single fee structure is preferred.

The approach for determining the effects of fee options for councils was informed by the data that councils provided. As noted in section 3.2.4, the data features wide variance across and within councils, and analytical limitations. To acknowledge these challenges while developing meaningful conclusions, this analysis focuses on the average cost recovery level for councils. The options presented do not aspire to achieve full cost recovery for every council, nor do they signal a single 'efficient cost' of the associated regulatory activities.



**Option 1 – Status quo**

Option 1 proposes to remake the current fee structure with the existing fee levels. Given the limitations associated with finding a single efficient cost for regulatory activities across councils, it is difficult to determine the extent to which the current fee structure and levels reflect costs across all councils. The current structure does not reflect the wide variations in costs associated with delivering councils’ regulatory activities.

The status quo is expected to recover approximately 104 per cent of costs on average.

**Option 2 – Broad fee increase for report and consent activities to reach full cost recovery**

Option 2 maintains the current fee structure but raises fee levels to achieve full cost recovery for all report and consents. Council cost data indicates that a flat fee increase of 37 per cent for all report and consent fees would achieve full cost recovery (on average) for those activities.

Option 2 is expected to recover approximately 117 per cent of total costs on average. This would increase cost recovery in the highest recovering council from 322 per cent to 362 per cent. It would increase cost recovery in the lowest recovering council from 37 per cent to 42 per cent.

**Option 3 – Targeted fee increase**

Option 3 involves introducing some additional fee levels to accommodate the variation in councils’ time and effort associated with regulatory activities related to processing report and consent applications. Data collected from councils revealed that siting matters and stormwater legal point of discharge are the highest volume report and consents, and that these two activities only currently recover approximately 67 per cent and 80 per cent (on average), respectively.

This option proposes to increase fees for report and consents related to siting and stormwater legal point of discharge matters by 40 and 45 per cent, respectively. Based on the data provided by councils, this would increase cost recovery for all report and consent activities from 63 per cent to approximately 83 per cent, on average.

Option 3 is expected to recover approximately 112 per cent of total costs per council, on average. This would increase cost recovery in the highest recovering council from 322 per cent to 356 per cent. It would increase cost recovery in the lowest recovering council from 37 per cent to 41 per cent. This shows the wide divergence in costs across all the councils and the difficulty in setting a single fee for each service that will not leave some councils under-funded for the services they provide.

Table 4-4: Summary of fee options for councils. Fee values presented below are based on 2023-24 fee units, which are subject to annual indexation

		Option 1 – Status quo		Option 2 – Broad increase		Option 3 – Targeted increase	
Regulation		Fee unit	Fee value (2023-24)	Fee unit	Fee value (2023-24)	Fee unit	Fee value (2023-24)
<b>36(1)</b>	Report & consent – demolition	5.75	\$91.43	7.88	\$124.97	5.75	\$91.43
<b>36(2)</b>	Report & consent – septic tanks, proximity to public infrastructure, projections, designated special areas	19.61	\$311.80	26.87	\$425.96	19.61	\$311.80
	Report & consent – siting matters	19.61	\$311.80	26.87	\$425.93	27.45	\$436.52
<b>36(3)</b>	Report & consent – precaution over street alignment	19.90	\$316.41	27.26	\$432.32	19.90	\$316.41
<b>36(4)</b>	Report & consent – stormwater legal point of discharge	9.77	\$155.34	13.38	\$212.27	14.17	\$225.25



<b>45(1)</b>	Lodgement of building documents	8.23	\$130.86	8.23	\$130.86	8.23	\$130.86
<b>52</b>	Requests for information	3.19	\$50.72	3.19	\$50.72	3.19	\$50.72



# 5 Options analysis

This chapter qualitatively discusses the preferred options for fees administered by the VBA, BAB and BRAC. It then analyses the options for council-administered fees using a multicriteria analysis that reflects the relevant Pricing Principles.

## 5.1 Approach to fees options analysis

This section provides a summative, qualitative analysis of the options for fees administered by the VBA, BAB and BRAC. This analysis explains why each preferred option was selected, along with any limitations or relevant implementation considerations of each preferred option. This approach is proportionate to the relatively low revenues that these entities accrue from their in-scope fees (see Table 3-5).

The fees administered by councils are considered using an analytical comparison of the three different fee options relative to the base case (where the fees identified in Regulation 286 are revoked). This approach aligns with the significant revenues councils accrue from their in-scope fees.

The comparison considers the strengths and limitations of each option using a multicriteria analysis (MCA). The application of the MCA will be followed by a qualitative discussion of relevant implementation considerations and consequences.

## 5.2 Preferred options for fees collected by the VBA, BAB and BRAC

The preferred options for fees collected by the VBA, BAB and BRAC are summarised below, with the proposed fees and total impact summarised in section 5.4.

### 5.2.1 VBA fees

Option 3 is the preferred option for the owner-builder certificate of consent fee. This sets the owner-builder fee at 14.42 fee units (\$229.28 in 2023-24), which represents a 109 per cent increase to the fee level.

Option 3 is preferred because the fee level accurately reflects the cost of the VBA's current regulatory activities, as well as its anticipated future costs, particularly those associated with reviewing and upgrading its digital learning portal and assessment material to reflect the regular and periodic changes to regulatory requirements (including NCC requirements) that owner-builder applicants are expected to meet. While Option 3 imposes a 109 per cent increase to the fee, it maintains the fee at an adequately low level such that it would likely not materially impact owner-builders' compliance, particularly given the proposed fee is only 1 per cent of the minimum cost of building work for which an owner-builder certificate of consent is required. Option 3 also achieves the objective of setting a simple fee structure by prescribing one flat fee.

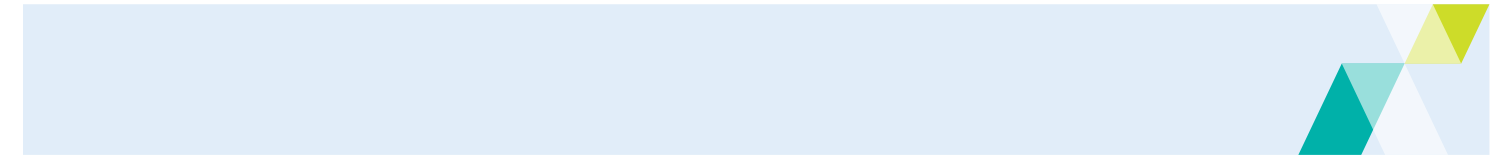
The proposed Regulations also give the VBA the ability to exempt a person from having to pay the whole or part of a fee payable to the VBA if the VBA is satisfied that payment of the whole or part of the fee will cause financial hardship for the person.

As noted in section 4.4, no change is proposed for the duplicate certificate fee, keeping this fee at 2.75 fee units (\$43.73 in 2023-24).

### 5.2.2 BAB fees

Option 3 is the preferred option for the fees administered by the BAB. This introduces fees with levels that are expected to recover approximately 29 per cent of the BAB's overall costs. An itemised breakdown of fees under Option 3 is provided in Table 4-2.

While Option 2 seeks to recover the full costs to the BAB of undertaking its functions, the substantial increase in fees is not considered reasonable. Option 3 is preferred because it most appropriately reflects the BAB's competing policy objectives for setting fees. The BAB's fee settings need to balance the aspiration that fees adequately reflect the cost of its services with the imperative of maintaining fees at levels that do not materially impact users' equitable access to justice (particularly those with a lower ability to pay). These considerations conflict in instances where the cost of services is at a point where fully recovering that cost through a fee would adversely impact parties with a lower ability to pay from accessing the jurisdiction of the BAB. Consultation with the BAB Chair and BAB registry suggested the proposed fees under Option 3 would balance this conflict and not materially impact users' equitable access to justice.



Option 3 balances this conflict by maintaining the stratified fee structure with different levels according to the type of application and building classification. The structure imposes higher fee levels for appeals, referrals and applications relating to Class 2 to 9 buildings when compared to domestic homes (Class 1 and associated Class 10 buildings). This assumes that applicants who are owners of Class 2 to 9 buildings would generally have a greater ability to pay without realising a material impact on their access to the BAB compared to applicants who are owners of domestic homes. In so doing, the stratification aims to impose fees at levels which partially reflect costs, while not hindering users' access to justice.

The fee levels under Option 3 vary according to the cost of each type of the BAB's services. While the fee levels are well below full cost recovery, they each represent a proportion of the full cost. This acknowledges the aspiration that fees should recover the costs of services but is moderated by access to justice considerations.

Option 3 imposes a fee structure that largely mirrors the current fee structure, with only a minor change to stratify fees for applications under section 160A of the Act, to assess building design compliance, between applications related to Class 2 to 9 buildings, and applications related to Class 1 or 10 buildings. Given this is only a minor change and mirrors the stratification already incorporated in the structure of the fees under Regulation 272, the proposed fee is not anticipated to present any material impact in complexity for the BAB to administer and for applicants to understand.

The proposed Regulations to support the BAB fee structure includes a regulation that gives the BAB the ability to exempt a person from having to pay the whole or part of a fee payable to the BAB if the chairperson, deputy chairperson or Registrar of the BAB is satisfied that payment of the whole or part of the fee will cause financial hardship for the person.

### 5.2.3 BRAC fees

Option 2 is the preferred option for the fees administered by the BRAC. This introduces fees with levels that are expected to approximately recover the costs associated with the BRAC accreditation process in full. Under this option, the fee for an application for accreditation or to renew an accreditation is set at 1,627.27 fee units (\$25,873.57 in 2023-24), which represents a 1,077 per cent increase to the fee level.

Option 2 is preferred because the fee level most accurately reflects the BRAC's costs associated with reviewing and assessing applications for accreditation. While the proposed fee level in Option 2 represents a significant increase to the total outlay for review and assessment activities, the increase is important to ensure the BRAC can sustainably continue to undertake thorough assessment of building products that are seeking accreditation. This is critical to ensure any products seeking accreditation are safe and fit for purpose. Despite this significant increase, the fee levels are also still competitive in comparison with other comparable accreditation processes, such as the Joint Accreditation System of Australia and New Zealand CodeMark scheme. Under Option 2, no change is proposed to the fee structure and there are only two flat fees which applications to the BRAC may incur, making the option straightforward for the BRAC to administer and for applicants to understand.

As noted in section 4.6, no change is proposed for applications to vary an accreditation of a building product, keeping this fee at 20.75 fee units (\$329.93 in 2023-24).

## 5.3 Multicriteria analysis for council fees

As outlined in Chapter 4, the three options for remaking council fees are:

- Option 1 – Status quo
- Option 2 – Broad increase
- Option 3 – Targeted increase.

Given the significant revenue collected by the council fees, compared to those collected by the VBA, BAB and BRAC (see Table 3-5), a more detailed analysis of the options for the council fees is undertaken in this RIS, in the form of a multicriteria analysis (MCA).

MCA has been chosen as the preferred analysis tool because it provides a robust way of evaluating the options, allowing for the disparate and often qualitative data available. It is a structured and transparent approach that can balance several distinct impacts, for example the extent to which fees are reflective of users' ability to pay versus the simplicity in which the fee structure is understood by users. Cost Benefit Analysis and other quantitative tools are not appropriate for this analysis because of the intangible nature of benefits.

### 5.3.1 MCA framework

MCA requires judgement as to how the proposed options will contribute to a series of criteria selected to reflect the benefits and costs associated with each fee option. Each criterion is assigned a weight, to reflect its importance to the policy decision. A weighted score is then derived for each option and the option with the highest weighted score is selected as the preferred option. The MCA technique is outlined in Figure 5-1.



Figure 5-1: Multi-Criteria Analysis

Multi Criteria Analysis MCA refers to a range of techniques used to assess policy options against a set of decision criteria. It enables a transparent comparison of options using a mixture of quantitative and qualitative information. This allows analysis to consider a wider range of criteria (e.g. equitable considerations) which are not typically included in other common financial analyses, like break-even analysis. All necessary subjective judgements and assumptions used to determine options and criteria, and to assign scores and weights, are made explicit in the write up. The preferences of the decision maker reflected in these judgements and assumptions can be readily changed through a sensitivity analysis or by incorporating alternative indicators.

Where possible, in MCA: scores should reflect the relative size or scale of impact when comparing:

- impacts of different options against a single option
- different impacts of a single option for all criteria.

Weights should reflect the priority or importance of a particular type of cost or benefit.

The criteria for this MCA, and their weights, are outlined in [Table 5-1: Criteria for MCA analysis](#).

Table 5-1 Criteria for MCA analysis

Criteria	Description	Weighting
Criterion 1: Cost recovery	The extent to which each option sets fees at a level which allow councils to recover the costs associated with fee-incurring activities.  This criterion reflects Pricing Principle 1 (agencies should aim to recover the full costs of service provision).	33.33 per cent
Criterion 2: Reflective of users' benefit	The extent to which each option sets fees at levels that capture users' benefit from councils' fee-incurring activities. This criterion assesses how effectively each option reflects users' benefit from regulatory activities through different fee levels.  This criterion reflects Pricing Principle 2 (the cost-of-service provision should be borne by those who benefit from the service).	33.33 per cent
Criterion 3: Simplicity	The extent to which each option reduces user and administration complexity, allowing fees to be simple for users to understand and comply and councils to administer.  This criterion reflects Pricing Principle 11 (pricing structures should be easy to understand).	33.33 per cent

Each option is scored against each criterion on a scale from -10 to +10, based on an option's impact on each criterion in comparison to the base case, which is scored zero ([Table 5-2](#)). The option that receives the highest weighted score of all the criteria is then selected as the preferred option.





Table 5-2: Options assessment criteria scoring

Negative					Neutral	Positive				
-10	-7	-5	-3	-1	0	1	3	5	7	10
Very high	High	Medium	Low	Very low	Nil	Very low	Low	Medium	High	Very high

A summary of the MCA results is provided in Table 5-3, which reveals Option 3 as the preferred option. The detailed analysis of the options against each criteria is outlined below.

Table 5-3: MCA scoring for all options

	Option 1 – Status quo	Option 2 – Broad increase	Option 3 – Targeted increase
Cost recovery	2	5	7
Reflective of users' benefit	2	5	6
Simplicity	-2	-2	-3
<b>Total weighted score</b>	<b>0.66</b>	<b>2.64</b>	<b>3.30</b>

### 5.3.2 Criterion 1: Cost recovery

#### 5.3.2.1 Option 1: Status quo

The status quo receives a score of 2 against this criterion, compared to the base case (where no fees are prescribed in the Regulations, but councils retain the head of power in the Act to charge a fee for report and consent activities).

Option 1 prescribes a maximum fee value for report and consent activities. Stakeholder consultation suggested that the costs associated with report and consent activities vary significantly across councils. This is primarily driven by different councils' regulatory processes, alongside situational variances like the time required for municipal building surveyors to travel to and inspect properties. Consequently, setting a maximum value for report and consent fees under this option will likely set fees at a level that is less cost reflective of councils' regulatory effort than in the base case (where no prescribed maximum fee value is set, so councils would likely set the fee at levels that reflect their costs).

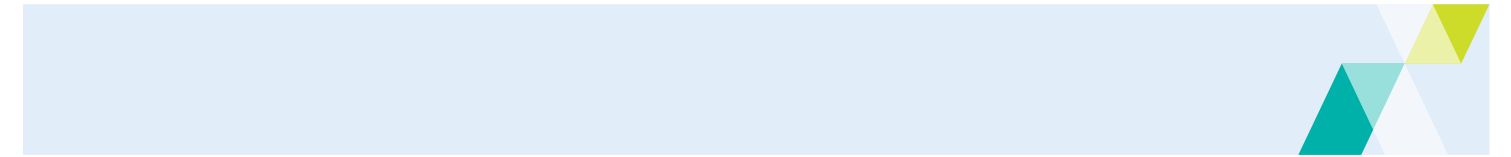
However, Option 1 also prescribes a fee for the lodgement of building documents and requests for information which would not exist under the base case. Therefore, this option provides greater reflectivity of council regulatory costs for these two processes than the base case, resulting in a slightly better score than the base case under this option.

Further, while Option 1 is more reflective of regulatory costs than the base case, stakeholder consultation suggested that it does not fully recover costs for all councils, particularly for report and consent activities. This implies that the status quo does not fully reflect the regulatory costs (in absolute terms) across all councils.

#### 5.3.2.2 Option 2: Broad increase

Option 2 receives a score of 5 against this criterion, compared to the base case.

Option 2 proposes to increase the fee levels for all report and consent activities to achieve full cost recovery for their associated activities, on average, compared to Option 1. Full cost recovery on average means that fees would be set at a level that matches the average cost associated with regulatory effort, based on the data councils provided through stakeholder consultation. Further qualitative discussion with councils revealed that an increase to report and consent fees was required to better align those fees with their costs. Option 2 would more accurately reflect the costs of report and consent activities compared with Option 1.



Option 2 does not propose to change the fee levels for lodgements and requests for information. This makes it the same as Option 1 for those fee types. Therefore, Option 2 receives a higher score than Option 1 because it more accurately reflects the regulatory costs of report and consent activities for councils, on average.

### 5.3.2.3 Option 3: Targeted increase

Option 3 receives a score of 7 against this criterion, compared to the base case.

Option 3 targets fee increases for report and consent activities related only to siting matters and stormwater legal points of discharge, based on their complexity and volume, and seeks to capture the greater regulatory effort required from councils for each of these activities. While Option 3 would only capture the average regulatory costs of activities (which may not reflect each individual councils' regulatory costs), the targeted increase would more closely reflect each report and consent activity's cost than under Option 1 and Option 2.

Consultation with councils suggested that siting matters are typically the most complex activity to undertake under the report and consent category. Stakeholder consultation also revealed that increasing fees for report and consents related to stormwater legal point of discharge would be more reflective of regulatory costs for a number of councils. Assuming this trend broadly applies to councils, and that greater complexity gives rise to greater cost, increasing the fee for siting matters would better reflect the cost to councils of conducting these activities.

Like Option 1 and 2, Option 3 does not propose to change the fee levels for lodgements and requests for information.

### 5.3.3 Criterion 2: Reflective of users' benefit

#### 5.3.3.1 Option 1: Status quo

Option 1 receives a score of 2 against this criterion, compared to the base case.

Option 1 charges fees to parties who require regulatory activities from councils as part of a building project. As these are private users of the regulatory services (such as individuals undertaking building works or building practitioners acting on behalf of a client and individuals seeking information about a building or land), they benefit from the regulatory oversight and services that councils provide. In this way, Option 1 is better at reflecting users' benefits than the base case for lodgement of building documents and requests for information as there would be no fees charged under the base case.

While the private benefit individuals receive from report and consent activities is unknown, a report and consent is generally required where an individual would like consent from council to undertake building works which are not in line with the Building Regulations, or which require an additional check by council or will interfere with public resources. Report and consent activities typically are required where building or land owners are improving their private asset, and so will benefit privately from these additional works. The base case allows for report and consent fees to be set at councils' discretion, however, the private benefit received would likely be higher than fees imposed by councils under the base case. As Option 1 does impose a maximum fee that councils can charge for report and consent activities, fees under Option 1 for report and consents are less reflective of users' benefits than the base case.

Taking these conflicting impacts together, Option 1 is marginally preferred to the base case for Criterion 2. This is because Option 1 better reflects users' benefits than the base case for two of the three broad fee types.

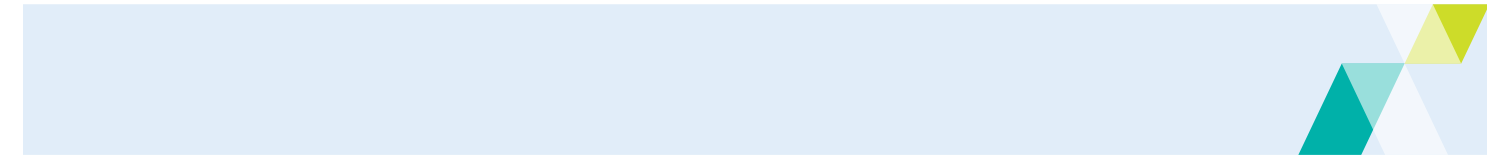
#### 5.3.3.2 Option 2: Broad increase

Option 2 receives a score of 5 against this criterion, compared to the base case.

Option 2 proposes to increase fee levels to fully recover the costs associated with councils' regulatory activities related to report and consents, on average. In so doing, it would increase fees for all report and consent activities, bringing the fee somewhat closer to the benefit that private users receive from councils providing consent for their building works to take place, compared to Option 1.

#### 5.3.3.3 Option 3: Targeted increase

Option 3 receives a score of 6 against this criterion, compared to the base case. Option 3 retains many of the existing fee levels under the base case. However, it does seek to more accurately recover the costs associated with report and consent activities relating to siting matters and the legal point of discharge of stormwater from the beneficiaries of those activities.



Given that siting matters and legal point of discharge report and consents are the highest volume and require the greatest regulatory cost for councils to consider, these report and consents likely represent activities which private users gain significant benefits from. Therefore, compared to Option 1 and 2, the targeted increase under Option 3 likely better aligns with users' benefits and received a higher score against this criterion.

### **5.3.4 Criterion 3: Simplicity**

#### **5.3.4.1 Option 1: Status quo**

Option 1 receives a score of -2 against this criterion, compared to the base case. The status quo maintains the existing fee structure and levels for councils' building regulatory activities, which would not exist under the base case. This means that, compared to the base case, the status quo is less simple for building practitioners to comply with and for councils to administer, as Option 1 does impose fees.

Given this option does prescribe fees for report and consents, compared to the base case where each council may impose their own charges, this option is simpler for applicants to understand the fee they may incur compared to the base case, moderating the negative impact of this option.

#### **5.3.4.2 Option 2: Broad increase**

Option 2 also receives a score of -2 against this criterion, compared to the base case. Option 2 maintains the same fee structure as Option 1. This means that it is equally simple for building practitioners to understand, and for councils to administer, as the status quo.

#### **5.3.4.3 Option 3: Targeted increase**

Option 3 receives a score of -3 against this criterion, compared to the base case. Option 3 imposes a new structure for report and consent fees by introducing a differentiated fee for siting matters (compared to the remainder of fees under 36(2)) and increases the fee for report and consents relating to legal points of discharge.

Compared to Options 1 and 2, Option 3 introduces an additional separation in fee amounts for report and consents, by introducing a differentiated fee for siting matters, compared to the other report and consents captured under Regulation 36(2). The introduction of an additional separation in fee amounts introduces some additional complexity for building practitioners to comply with, and for councils to administer compared to the other options and the base case. While stakeholders broadly indicated that this structure may be worthwhile, some also posed that it may be too administratively complex to be worth implementing in place of the existing structure. This causes Option 3 to receive the lowest score for this criterion. This score however is only slightly lower than the other options given the change is not significantly complex, that there are already a number of varying fees for different report and consent and a fee will still be required to be paid for all report and consent activities.

### **5.3.5 Preferred option for fees collected by councils**

For the council fees, as shown in the MCA results in [Table 5-3](#), the preferred option is Option 3. Under this option, fee levels for siting matters and stormwater legal points of discharge are proposed to increase to reflect the complexity and volume associated with their regulatory activities. The other fee settings and levels are proposed to remain the same as the current fee levels.

The cost recovery data provided by councils suggests that there is a wide distribution of cost recovery proportions for fee-incurring activities. This is primarily driven by the significant variation in unit costs. Consequently, while the proposed increase may improve cost recovery on average across councils, it will likely still result in over- and under-recoveries for a number of councils. Based on the data provided by councils, 14 out of 17 councils would be over-recovering under the proposed fees, while 3 councils would continue to under-recover. This is the same as under the status quo, but with lower levels of recovery for all councils.

## **5.4 Summary of impact of the proposed fees**

The proposed fees for all fees prescribed in the Regulations and listed under Regulation 286 are outlined in [Table 5-5](#) below, along with the proposed percentage increase from current fee levels. The analysis in this RIS assumes the proposed increase in fees will not have a material impact on overall building activity. This is because the increases in fees directly related to building activity, such as report and consents or owner-builder certificates of consent, are relatively small compared to typical total building costs. For example, the largest increase in this type of fee is a \$125 increase for report and consents related to siting matters.



While there are some significant fee increases proposed for the VBA, BAB and BRAC, these increases are considered warranted given the significant levels of under-recovery each of these fee collecting entities currently receive in relation to the regulatory activity and services (refer to Table 3-5). Additionally, the VBA, BAB and BRAC fees were first prescribed in fee units in 2014 and have not been increased since this time (outside of indexation).

As noted throughout this RIS, costs to each of the fee collecting entities in relation to the fees prescribed in the Regulations and listed under Regulation 286 vary widely depending on several factors, such as the number of applications received in a year (particularly for the BAB and the BRAC) and, in the case of councils, depending on resourcing capacity and capability and geographical location. For these reasons forecast estimates of costs and revenue are difficult to calculate with accuracy.

Table 5-4, however, provides an indication of the estimated annual average impact and cost recovery levels over the period the proposed fees will be in place for, from FY25-28. Forecast costs and revenues are estimated using a weighted 5-year historical average of CPI and an assumed growth in volume of building activity over the forward estimate. Table 5-4 also indicates the revenue generated for each of the entities across the 4 years from FY25-28 in net present value (NPV) terms (applying a 4 per cent discount rate).

Table 5-4: Forecast annual average costs and revenue for fee collecting entities and NPV over FY25-28

	VBA	BAB	BRAC	Councils (average, per council)
Forecast annual average cost	\$1,002,000	\$3,258,000	\$114,000	\$651,000
Forecast annual average revenue	\$1,307,000	\$929,000	\$114,000	\$731,000
Recovery	130% <sup>21</sup>	29%	100%	112% <sup>22</sup>
NPV (Revenue)	\$4,733,000	\$3,366,000	\$414,000	\$2,649,000

For the VBA, the estimated annual average revenue generated over FY25-28 is \$1.3 million. As indicated by Table 5-4, the increased owner-builder fee will ensure that the VBA can recover its associated costs required to review, upgrade and administer the online owner-builder digital learning portal and assessment material. The higher fee will provide the revenue needed to give the VBA capacity and resources for costs over the next four years related to reviewing and upgrading the online materials, including regular and periodic changes to align with NCC and other regulatory requirements that owner-builder applicants are expected to meet.

For the BAB, the estimated annual average revenue generated over FY25-28 is \$0.9 million. As indicated by Table 5-4, the increases in BAB fees are anticipated to recover only 29 per cent of the BAB's forecast costs. This under-recovery is considered appropriate given a number of factors, including:

- this provides a significant improvement on current cost recovery levels of approximately 9 per cent
- the proposed fee increases in some instances are significant, and increasing any further will likely lead to unintended consequences (such as decreased use of the BAB's services)
- keeping the fees below full cost recovery aligns with BAB objectives of not restricting access to justice.

For the BRAC, the estimated annual average revenue generated over FY25-28 is \$114,000. As indicated by Table 5-4, the increased fee for BRAC accreditation is anticipated to bring BRAC levels of cost recovery to approximately 100 per cent. It is important to note that BRAC costs and revenue in any given year are highly dependent on the number of accreditation applications received, and that while the proposed accreditation fee imposes a significant increase from current fee, the proposed fee is a much closer representation of the costs to BRAC and the benefits received by product owners of having their product accredited. The significant increase in the fee is not anticipated to deter applicants, given BRAC accreditation fees will continue to be lower than the national accreditation scheme, CodeMark.

<sup>21</sup> While Table 5-4 shows that the forecast levels of cost recovery for the VBA are 130 per cent, the cost base does not include the anticipated future costs to VBA associated with updating and administering the online owner-builder learning module and assessment material. This will provide the revenue needed to give the VBA capacity and resources for costs related to these updates over the next four years. If the VBA's costs of updating and administering the online owner-builder learning module and assessment material for owner-builders were built into the cost-base, the level of cost recovery for the VBA would be closer to 100 per cent.

<sup>22</sup> Table 5-4 shows that the forecast levels of cost recovery for councils on average is 112 per cent. This is difficult to avoid, given the wide divergence in costs across all the councils and the need to set a single fee for each service that will not leave some councils under-funded for the services they provide.



For councils, the estimated annual average revenue generated over FY25-28 is \$731,000 per council, representing a total annual average revenue of \$57.8 million across all councils in Victoria. As indicated by Table 5-4, the total amount of fees anticipated to be recovered by all councils, on average, under the proposed Regulations may lead to over-recovery. This over-recovery on average is considered warranted given the highly variable costs faced by councils across Victoria and the likelihood the proposed fees would still leave a number of councils at levels of under-recovery. For example, in the data received from councils, the proposed fees will increase cost recovery for the currently lowest recovering council from 37 per cent to 41 per cent. Additionally, while the data request distributed to councils attempted to collect all attributable costs, there was likely variance in the scope of costs reported by each council, which may have understated the actual total costs associated with the regulatory activities and services (such as overheads and IT costs), and therefore estimated cost recovery levels are likely overstated.



Table 5-5: Proposed fees for fees prescribed in the Regulations and listed under Regulation 286<sup>23</sup>

Fee collecting entity	Regulation	Description	Proposed fee units	Proposed fee value (2023-24)	Proposed increase (%)
<b>VBA</b>	18	Application for (owner-builder) certificate of consent to carry out domestic building work (>\$16,000).	14.42	\$229.28	109%
<b>Councils</b>	36(1)	Report and consent relating to demolition of a building.	5.75	\$91.43	0%
<b>Councils</b>	36(2)	Report and consents relating to septic tank systems under Regulation 132(1), buildings in close proximity to public facilities under Regulation 134(2), projections beyond street alignment under Regulation Part 6 and designation of special areas for building work under Regulation Part 10.	19.61	\$311.80	0%
<b>Councils</b>	36(2A)	Report and consents relating to siting matters under Part 5 of the Regulations	27.45	\$436.46	40%
<b>Councils</b>	36(3)	Report and consent relating to obtaining council approval for erection of precautions over street alignments under Regulation 116(4).	19.90	\$316.41	0%
<b>Councils</b>	36(4)	Report and consent relating to relating to legal point of discharge of stormwater drainage systems under Regulation 133(2).	14.17	\$225.30	45%
<b>Councils</b>	45(1)	Lodgement fees for private building surveyors to provide the relevant council with building permits and other documents under section 30 of the Building Act.	8.23	\$130.86	0%
<b>Councils</b>	52	Fee for requests for information relating to: building or land under Regulation 51(1), building or land characteristics or surrounds under Regulation 51(2), or from owners or mortgagees of a building or land under Regulation 51(3).	3.19	\$50.72	0%
<b>BRAC</b>	244(1)	Fee for application for accreditation of a building product or renewal of accreditation.	1,627.27	\$25,873.57	1,077%
<b>BRAC</b>	244(1A)	Fee for variation to accreditation.	20.75	\$329.93	0%
<b>VBA</b>	266	Duplicate certificate fee for building practitioners under section 79(1)(b) of the Building Act.	2.75	\$43.73	0%
<b>BAB</b>	272	Appeal under ss. 138, 138A, 140, 141, 142 for Class 2 to 9 buildings	70.95	\$1,128.09	54%
<b>BAB</b>	272	Appeal under ss. 138, 138A, 140, 141, 142 for Class 1 or 10 buildings	35.46	\$563.80	54%
<b>BAB</b>	272	Appeal under ss. 139, 144, 144A for Class 2 to 9 buildings	47.28	\$751.73	105%
<b>BAB</b>	272	Appeal under ss. 139, 144, 144A for Class 1 or 10 buildings	28.36	\$450.92	105%
<b>BAB</b>	272	Referral under ss. 151, 152, 153, 154, 155, 156, 157, 158 for Class 2 to 9 buildings	80.64	\$1,282.18	75%

<sup>23</sup> The proposed fee units in the table are expressed in 2023-24 fee units. As fee units are indexed annually, the proposed new fee values in the RIS may increase in line with the indexation rate on the date of commencement. This will not have material impact on the cost benefit ratio as the indexation would equally apply to the status quo as well as the proposed increase.



<b>BAB</b>	272	Referral under ss. 151, 152, 153, 154, 155, 156, 157, 158 for Class 1 or 10 buildings	40.30	\$640.77	75%
<b>BAB</b>	272	Referral under s. 150 for Class 2 to 9 buildings	60.45	\$961.16	162%
<b>BAB</b>	272	Referral under s. 150 for Class 1 or 10 buildings	36.26	\$576.53	162%
<b>BAB</b>	272	Application under s. 159 for Class 2 to 9 buildings	80.59	\$1,281.38	75%
<b>BAB</b>	272	Application under s. 159 for Class 1 or 10 buildings	40.28	\$640.45	75%
<b>BAB</b>	272	Application under s. 164 for Class 2 to 9 buildings	50.35	\$800.57	119%
<b>BAB</b>	272	Application under s. 164 for Class 1 or 10 buildings	30.20	\$480.18	119%
<b>BAB</b>	272	Application under s. 160 for Class 2 to 9 buildings	80.55	\$1,280.75	337%
<b>BAB</b>	272	Application under s. 160 for Class 1 or 10 buildings	36.23	\$576.06	337%
<b>BAB</b>	272	Application for determination in respect of building design under s.160A for Class 2 to 9 buildings	101.37	\$1,611.78	450%
<b>BAB</b>	272	Application for determination in respect of building design under s.160A for Class 1 or 10 buildings	40.55	\$644.75	120%
<b>BAB</b>	272	Application for a modification relating to access for persons with disabilities under s.160B	55.31	\$879.43	32%
<b>BAB</b>	273	Fast track of appeals under s.147(1)	75.68	\$1,203.31	105%
<b>BAB</b>	273	Fast track of appeals - additional hearing time per hour or part under s.147(3)(b)	15.13	\$240.57	3%

# 6 Competition and small business impacts

This chapter assesses the small business and competition impacts of the preferred option.

## 6.1 Small business considerations

To ensure the impacts of regulation on small business are examined appropriately, an assessment of the effects specifically relating to them is required. This aims to ensure that regulation does not unduly impact small business growth and productivity.

Smaller businesses can sometimes experience disproportionate impacts from regulatory change due to having fewer resources to understand or undertake compliance activities, or because lower revenues (relative to larger businesses) mean that regulatory burden can have a larger relative impact to productivity

## 6.2 Competition considerations

As Victoria is a party to the Competition Principles Agreement, regulation in Victoria is required to include a competition assessment.<sup>24</sup> The Competition Principles Agreement sets out that any new primary or subordinate regulation should not restrict competition, except where:

- restriction of competition is required to meet the government's objectives
- the benefits of the restriction outweigh the costs.

Restrictions on competition can be identified where there will be changes to the way a market functions due to the implementation of the proposed regulation. In this case, restrictions may occur where:

- the number of practitioners or firms is limited
- the ability of practitioners or firms to compete is limited
- the incentive of practitioners or firms to compete vigorously is reduced.

## 6.3 Small business and competition impact analysis

Overall, the proposed fees are unlikely to have a material impact on the quality, innovation, competition or cost of building construction activities, or disproportionately impact small businesses, in Victoria. While it is expected that the increase in fees will be passed on to consumers, the additional burden on any individual consumers is expected to be minor relative to the cost of building activities and not ultimately impact users' decisions to undertake building works. The consideration of small business and competition impacts is broken down for the fee types collected by each entity in Table 6-1.

Table 6-1: Small business and competition impacts across fee collecting entities

Fee collecting entity	Small business and competition impacts
VBA	<p>The proposed fees collected by the VBA relate mainly to issuing of certificates of consent for owner-builders to undertake building works. As owner-builders are generally private individuals, these fees are not expected to impose any small business or competition impacts.</p> <p>Given the value of the owner-builder fee compared to the cost of building works, it is unlikely the proposed fee would lead to individuals either deciding not to undertake the building works at all or deciding to enlist a builder instead of undertaking the works themselves.</p>

<sup>24</sup> Better Regulation Victoria, 'Victorian Guide to Regulation' (November 2016).





The proposed fee associated with issuing a duplicate building practitioner's certificate fee is not considered high enough to create a barrier to re-enter the market if the initial practitioner's certificate is misplaced, even for a small business.

BAB

The BAB provides a tribunal service which makes determinations in proceedings in respect of appeals, disputes and applications including to modify or vary the Regulations. To the extent a business is seeking to make an appeal or resolve a dispute, the proposed fee may impose a barrier for some businesses, which will likely be a higher barrier for a small business compared to a large one. Wherever possible, businesses will typically pass these costs on to consumers, reducing the impact.

BRAC

The proposed fee for applications for accreditation to the BRAC impose a significant cost on manufacturers who seek accreditation for their building products, however, the BRAC will still be providing accreditation at a lower cost than the national CodeMark accreditation scheme.

As accreditation is voluntary, it is possible that the increase may disincentivise manufacturers from seeking accreditation. Given that manufacturers may still be able to sell their product for use in the market without accreditation (for different purposes), any such disincentive may not have a material impact on small business, competition, or innovation. To the extent that accreditation provides a competitive advantage against other unaccredited products on the market, charging fees for accreditation may still pose some barriers to competition for small businesses.

Councils

The proposed fees collected by councils, in almost all instances, are incurred by an individual wishing to seek permission or information from council in relation to building works and land. In circumstances where an individual may have engaged a small business (building practitioner or surveyor) to undertake this work for them, the fee associated with the application to council, in almost all cases, will be passed through to the consumer.

Therefore, the proposed council fees are not anticipated to impact disproportionality on small business or on competition.



# 7 Implementation and evaluation

This chapter outlines plans for the implementation of the proposed fees and how DTP will evaluate the efficiency and effectiveness of the fees.

## 7.1 Implementation of the proposed fees

The release of the proposed Regulations and this RIS for a 28-day public consultation period will provide key stakeholders and members of the public the opportunity to consider the recommended options and provide feedback.

At the conclusion of the public comment period, DTP will take into account the feedback on both the proposed Regulations and the RIS in finalising the Regulations. DTP will prepare a formal response to public comment document, which will detail the comments provided in the public comment submissions and a response to those comments.

The Office of the Chief Parliamentary Counsel (OCPC) will review and settle the proposed Regulations. The Regulations will be submitted to the Minister for Planning for approval and to recommend the Governor in Council make the new Regulations.

DTP will notify the fee collecting entities of the new fee unit values once they have been approved, in advance of their commencement date. This will enable them to update their systems and forms to reflect the new values. As part of implementation, DTP and the fee collecting entities will inform key stakeholders and the public of the new fees payable through website material and Q&As for stakeholders and consumers.

The fees are proposed to take effect on 1 July 2024. Fees will be indexed each financial year in line with the Treasurer's annual rate set under the Monetary Units Act 2004. Fee units prescribed in the proposed Regulations equate to the dollar values of fees stated in this RIS based on the 2023-24 fee units. As fee units are indexed annually, the proposed new fee values in the RIS may increase in line with the indexation rate on the date of commencement. This will not have material impact on the cost benefit ratio as the indexation would equally apply to the status quo as well as the proposed increase.

DTP and fee collecting entities will commence communicating the changes to the public prior to their implementation through the communication channels identified above.

Once the Regulations are made, DTP will be responsible for overseeing implementation of the proposed Regulations and the fee collecting entities will be responsible for applying and collecting the new fee rates. DTP and the fee collecting entities will monitor implementation of the new fees. Through this process, it is anticipated that these entities will identify and manage risks as they arise.

## 7.2 Evaluation of the proposed fees

DTP (in collaboration with fee collecting entities) will develop measures to monitor the effectiveness of the new fees in raising revenue equivalent to the costs of providing an appropriate level of service in line with statutory requirements. It will also determine the frequency of reporting requirements on these measures.

As the total impact of the proposed fees is above the \$8 million threshold for a high impact proposal, DTP would ordinarily be required to undertake a mid-term evaluation three to five years after implementation, in accordance with the Victorian Guide to Regulation. However, the proposed fees will amend the Building Regulations 2018 and therefore only be in place for the next four years, when the entire set of the Regulations, including the fees, will be remade. The proposed fees will therefore be reviewed as part of the broader sunset review for the Building Regulations. This review will help inform DTP's understanding of whether the new fee settings recover the cost of regulatory activities in line with the Victorian Government's Pricing Principles.

DTP will engage with fee collecting entities during the sunset review to gather qualitative and quantitative data on the effectiveness of the fees and their impact on the community. The review will enable DTP to assess whether the objectives of the proposed fees are being met, or whether there is a need to make amendments to meet the desired outcomes. DTP will also consider whether there is a need to make amendments to address any unintended consequences. The evaluation of the proposed fees against their objectives will assess whether:

- the revenue collected from the fees continues to represent an efficient, effective, and equitable contribution to the cost of activities and administration associated with the regulatory charges
- there are any new or unintended consequences including reduced levels of compliance as a result of the new fees that may need to be addressed or corrected



- the fees are otherwise operating efficiently.



# Appendix A Current fees prescribed in the Regulations and listed in Regulation 286

A full list of the current fees prescribed in the Regulations and listed under Regulation 286 of the Building Regulations 2018 are outlined in Table A.1, along with their corresponding section of the Regulations, fee units, fee value in FY2023-24 and fee collecting entity.

Table A.1: List of fees prescribed in the Regulations and listed under Regulation 286

Fee collecting entity	Regulation	Description	Fee units	Fee value FY23-24
<b>VBA</b>	18	Application for (owner-builder) certificate of consent to carry out domestic building work (>\$16,000).	6.90	\$109.71
<b>Councils</b>	36(1)	Report and consent relating to demolition of a building.	5.75	\$91.43
<b>Councils</b>	36(2)	Report and consents relating to septic tank systems under Regulation 132(1), buildings in close proximity to public facilities under Regulation 134(2), siting matters under Regulation Part 5, projections beyond street alignment under Regulation Part 6 and designation of special areas for building work under Regulation Part 10.	19.61	\$311.80
<b>Councils</b>	36(3)	Report and consent relating to obtaining council approval for erection of precautions over street alignments under Regulation 116(4).	19.90	\$316.41
<b>Councils</b>	36(4)	Report and consent relating to relating to legal point of discharge of stormwater drainage systems under Regulation 133(2).	9.77	\$155.34
<b>Councils</b>	45(1)	Lodgement fees for private building surveyors to provide the relevant council with building permits and other documents under section 30 of the Building Act.	8.23	\$130.86
<b>Councils</b>	52	Fee for requests for information relating to: building or land under Regulation 51(1), building or land characteristics or surrounds under Regulation 51(2), or from owners or mortgagees of a building or land under Regulation 51(3).	3.19	\$50.72
<b>BRAC</b>	244(1)	Fee for application for accreditation of a building product or renewal of accreditation.	138.31	\$2,199.13
<b>BRAC</b>	244(1A)	Fee for variation to accreditation.	20.75	\$329.93
<b>VBA</b>	266	Duplicate certificate fee for building practitioners under section 79(1)(b) of the Building Act.	2.75	\$43.73
<b>BAB</b>	272	Appeals, disputes and applications under s.139, 144, 144A, 150 and 164 for Class 1 or 10 buildings.	13.82	\$219.74



<b>BAB</b>	272	Appeals, disputes and applications under s.138, 138A, 140, 141, 142, 151, 152, 153, 154, 155, 156, 157, 158, and 159 for Class 1 or 10 buildings.	23.04	\$366.34
<b>BAB</b>	272	Appeals, disputes and applications under s.139, 144, 144A, 150 and 164 for Class 2 to 9 buildings.	23.04	\$366.34
<b>BAB</b>	272	Appeals, disputes and applications under s.138, 138A, 140, 141, 142, 151, 152, 153, 154, 155, 156, 158, and 159 for Class 2 to 9 buildings.	46.10	\$732.99
<b>BAB</b>	272	Applications under s 160 for Class 1 or 10 buildings.	8.29	\$131.81
<b>BAB</b>	272	Applications under s 160 for Class 2 to 9 buildings.	18.43	\$293.04
<b>BAB</b>	272	Application for determination of building design compliance under s.160A.	18.43	\$293.04
<b>BAB</b>	272	Application for a modification relating to access for persons with disabilities under s.160B.	41.89	\$666.05
<b>BAB</b>	273	Fast tracking of appeals under s.147(1).	36.88	\$586.39
<b>BAB</b>	273	Fast track of appeals - additional hearing time per hour or part under s.147(3)(b).	14.75	\$234.53



# Appendix B Stakeholder consultation summary

The fees prescribed in the Building Regulations 2018 and listed under Regulation 286 are collected by a number of entities for the regulatory activities they each undertake in relation to their functions under the regulations. Given this, Deloitte undertook two streams of consultation to support the development of this RIS:

- Stream one – consultation with the VBA, BAB and BRAC
- Stream two – consultation with councils.

## Stream one – consultation with the VBA, BAB and BRAC

Consultation with the VBA, the BAB Registrar and the BRAC Executive Officer was undertaken in March 2023 and comprised of a data request and online workshops with each entity to further understand the revenue, costs and drivers of variance associated with each fee type. Consultation with the BAB Chair and the BRAC Chair (acting) was undertaken in July 2023 to validate revenue and cost assumptions and drivers of each fee type, and to test fee options.

Across all entities, volumes of applications and associated revenue were more readily accounted for, with related cost base data being harder to attain. Almost all in-scope fees collected by each of these entities are not recovering costs of administration, with the exception of fees associated with processing duplicate certificates for building practitioners, which are covering processing costs for the VBA.

For the VBA, a component of the costs associated with owner-builder certificates of consent relates to the ongoing costs of delivering the eLearning assessment and the cost of the VBA360 online platform to manage owner-builder applications. The VBA noted an increase in owner-builder fees is required to support the higher costs associated with providing the eLearning module that helps owner builders gain the required knowledge of their duties and responsibilities before the VBA issues a certificate of consent. These increased costs relate to improving and updating the eLearning module content to reflect changes to the National Construction Code and Australian Standards, and for software licensing costs. Owner-builders often have limited knowledge on their duties and responsibilities and the provision of essential and accurate information and assessment is critical to meeting the VBA's regulatory obligations.

For the BAB, while revenue received for matters is not currently recovering costs, achieving full cost recovery is not an objective. There is considered a need to balance the ability for the BAB to carry out its statutory functions while also ensuring fees charged for those services are kept at a level which allows equitable access to justice. The BAB Chair suggested further exploration of fee structures in other comparable judicial bodies such as the courts and the Residential Tenancies Hub (VCAT), as these bodies are required to set fees that contend with the tension between cost recovery and preserving equitable access to justice.

The BAB Registrar noted that fees are currently structured in a way which charges a higher fee for matters pertaining to building classes 2-9, compared to matters pertaining to building classes 1 and 10. This structure is considered relevant and allows for typically more complex matters to incur a higher fee while still allowing access to justice for typically less complex matters. While the BAB Registrar was not aware of the policy rationale behind the number of different fees charged for different matters, they did note that fees could be better aligned where possible.

The BAB Chair noted that further stratifying fee types according to whether the applicant is a corporate entity or a natural person may reflect the costs of the BAB's services with greater specificity and/or align with parties' ability to pay, however legal advice received during the development of options noted this would not be feasible within the scope of the Regulation 286 review.

While the BRAC receive a low volume of applications for accreditation each year, revenue received from prescribed fees are significantly under-recovering the costs of the accreditation process. The BRAC Chair (acting) and Executive Officer noted that costs become greater when external testing, or re-testing of products in the process is required, and a fee structure which allows for additional charges associated with the complexity of the assessment could be considered. The BRAC Chair (acting) noted, however, that it would be difficult upon initial application to determine whether an application is complex and requires a higher level of effort. Consideration was given to varying accreditation fees based on complexity, however, regulation making powers do not currently allow for definitions of complexity to be created that would enable varied fees according to differing circumstances.

The BRAC Chair (acting) and Executive Officer also noted that higher fees could lead to a reduction in the already low number of applications for accreditation received each year, potentially impacting the workload of building surveyors who



would then have to conduct individual assessments on innovative solutions rather than rely on the centralised assessment of a BRAC accreditation if the use complies with the accreditation. Further, it was noted that higher fees would more likely lead to a product not being accredited, rather than seeking accreditation from a comparable scheme. BRAC understands the national Australian Building Codes Board CodeMark scheme fees are significantly higher than current BRAC fees.

## Stream two – consultation with councils

Consultation with councils was undertaken from April-July 2023. A comprehensive data request was distributed to all Council CEOs in Victoria to provide an opportunity for input. Two follow-up workshops were held with a number of select councils to further understand the revenue, costs and drivers of variance associated with each fee type to inform development and refinement of options. Having identified the options under consideration, Deloitte, DTP and MAV met again with a number of select councils to seek feedback on the proposed options. Select councils consulted during this process were chosen in consultation with DTP and the Municipal Association of Victoria.

Out of the 79 councils in Victoria, 38 (48 per cent) provided a response to the data request. 19 (50 per cent) of the responding councils were from metro localities and 19 (50 per cent) were from rural/regional localities. Councils who responded to the data request include:

- Banyule City Council
- Baw Baw Shire Council
- Brimbank City Council
- Campaspe Shire Council
- Cardinia Shire Council
- Central Goldfields Shire Council
- City of Ballarat
- City of Casey
- City of Greater Bendigo
- City of Greater Dandenong
- City of Greater Geelong
- City of Kingston
- City of Monash
- City of Stonnington
- City of Whittlesea
- City of Wodonga
- Colac Otway Shire Council
- Glen Eira City Council
- Golden Plains Shire Council
- Hepburn Shire Council
- Hobsons Bay City Council
- Knox City Council
- Latrobe City Council
- Loddon Shire Council
- Macedon Ranges Shire Council
- Maroondah City Council
- Melton City Council
- Mildura Rural City Council
- Merri-bek City Council
- Mount Alexander Shire Council
- Murrindindi Shire Council
- Nillumbik Shire Council
- Northern Grampians Shire Council
- South Gippsland Shire Council
- Wellington Shire Council
- Whitehorse City Council
- Wyndham City Council
- Yarra Ranges Council

Across all of the councils who provided data, volumes of applications and associated revenue were more readily accounted for, with related cost base data being harder to attain. A number of councils communicated a material degree of uncertainty regarding their current cost base. The data received in response to the data request has informed the identification of the cost base in Chapter 3, as well as analysis to determine the level at which to set the remade fees.

Significant variance was observed across councils in the way data is captured, as well as in capacity to respond to the data request. For those councils who were able to provide data, significant variation was also observed in the level of cost recovery the fees are currently providing councils, as well as in the way applications are processed. A combination of digital and manual processing of applications was observed between councils, as well as within councils, depending on the application type. Information sessions were held with Councils in November 2023 to update them on the project and how the data they provided informed the options.



## **Report and consents**

While some councils reported that revenue received from fees were likely covering their costs, many noted that the revenue received is not sufficient and often there are hidden costs which are difficult to measure or attribute specifically to these regulatory activities.

Councils noted that a key driver in variance of costs related to siting matters, based on the amount of work required to assess proposed designs, inspect sites, write detailed reports, advertise, deal with objections, request redesign or prepare for appeals. Particularly, those matters which require site inspection, referral to another department, or where advertising and/or gaining consent from adjoining owners is required cause councils to incur the most costs. For matters which require site inspections to be undertaken, regional councils in particular can face significant and varying costs depending on the distance required to be travelled.

Report and consent applications can often require internal referrals and consultation from council departments outside the building department, such as from the engineering, planning or health departments. In applicable cases, consultation with potentially impacted neighbours may also be required. These applications can also require consultation with external authorities, such as water authorities for flood consents. Commonly, councils noted that report and consents related to demolitions were the most straight forward to process.

Another key driver in variance frequently noted by councils related to the quality of applications submitted. Report and consent applications can often contain poor or insufficient information and unreasonable requests, with councils reporting often having to request further information up to 2-3 times per application.

While some councils noted that fee structures could be changed to better account for the varying complexity, other councils preferred no change or simple fee structures, noting that while some applications are more complex than others, the revenue collected compared to costs typically evens out over time.

There were mixed opinions from councils regarding the impacts of fee levels on compliance. Some councils noted that if fees were increased too much, a decrease in compliance may occur. However, other councils suggested that there may not be a material impact on compliance as obtaining a building permit would depend on successfully following the report and consent process.

## **Lodgement fees**

A number of councils reported that revenue received from fees collected with the lodgement of documents from building surveyors were covering their costs. However, a common theme amongst councils was that while fees do cover low scale, residential works documents, costs associated with lodging and storing documents for higher density commercial works were often not covered.

Costs typically scale with the number of documents submitted in a lodgement, as downloading and filing effort and storage costs increase relatively linearly. Councils also commonly noted that variance in effort and costs occur when the documents submitted are missing information, poorly compiled and unintelligibly labelled. Further, councils noted that fees associated with lodging documents (under section 30 of the Act) only cover one element in the process and do not cover instances where amendments are made to already submitted building permits. Other interacting requirements which require updates to the property file, such as notifications to council of the appointment of a private building surveyor (under section 80 of the Act) or lodgement of an occupancy permit with council (under section 73 of the Act), also incur no fee.

## **Requests for information**

Majority of councils reported that fees collected with requests for information typically cover the costs of retrieving and sending files, and that requests do not typically vary significantly in complexity.

In instances where there is greater effort required, this typically occurs when large complex files need to be retrieved, subdivisions of land or changes of address have occurred, other internal departments need to be contacted for information, or where documents were not lodged correctly. In the latter instance, councils sometimes follow up private building surveyors to obtain missing documents. Several councils noted requests for information under Regulation 51(3) often take more time, as inspection history is not information typically recorded and can often require obtaining dated information which needs to be recalled from offsite storage.