

Building: Siting – Part 5 of the Building Regulations

Q&A

The following answers have been provided to questions asked during the [Building: Siting - Part 5 of the Building Regulations webinar](#) on 11 July 2024.

The answers provided are correct as of 24 July 2024.

Where can I find a copy of the presentation slides?

A copy of the presentation slides and recording of the webinar are available from the [VBA website](#).

Where there is a solid wall on the boundary, but it is open on one or more sides and is forming part of a verandah/alfresco area, is this assessed under Regulation 80 or as a verandah under regulation 79?

If the verandah has a fully enclosed wall on or within 200mm of the boundary, yes, it is possible to apply Regulation 80 however, we suggest running the proposal past the local council as they can take enforcement action if they do not agree with this.

Regulation 75(3) is only applicable if the wall on the boundary is compliant with Regulation 80. If not, this clause is not applicable. Is that correct? I have a lot of councils suggesting that you need both consents.

If the wall is not constructed in accordance with Regulation 80, then Regulation 75 sub-regulation (3) is not applicable. Report and consent would only be required where the wall in question was constructed in accordance with Regulation 80 and did not comply with 75(3).

When assessing Regulation 74, where is the front setback taken from? In particular, I want to know if the minimum street setback under Regulation 74 will apply to a singular point of the building or multiple points to any part of the building. Several councils have requested for the application to reflect multiple points on the building.

As discussed in the [webinar](#), the minimum street setback is taken from the front street alignment to the front wall of the building facing the street. Where you have more than one street, the wall of the building that presents as the architectural frontage of the building is considered the front wall of the building where the setback should be taken from.

What is the minimum setback on a battleaxe block?

The minimum setback is the same for any allotment and with respect to the minimum for a building on a battleaxe allotment, the minimum setback will always be achieved as the building will always be setback more than 9m from the front street.



Are fences which are perpendicular to the street e.g. side boundary fences considered in Regulation 89? Although the title of the regulation includes the term "front fence height", we have seen two different interpretations develop. The first being that the regulation states "the height of a fence, or part of a fence, that is within 3m of the street alignment", therefore the regulation is applicable to all fences regardless of whether they are facing the front. The second interpretation is that the regulation is intended or does apply only to fences facing the street "front fences" as the regulation is titled including the term "front fence" and therefore the regulation doesn't apply to side boundary fences. Can you please provide clarification on this?

Regulation 89 applies to all fences within 3m of the front street alignment due to the way the regulation is written, as it states, "*the height of a fence, or part of a fence, that is within 3 m of the street alignment at the front of an allotment must not exceed the relevant maximum height specified in Table 89*". As part of a side fence is within 3m of the street alignment at the front of the allotment it must comply with Regulation 89.

Are basements included in site coverage? How much soil on top of the basement to be considered as permeable? Do you need to consider basements within Regulations 74, 79 & 80 setbacks?

Regulation 76 uses the word "buildings" therefore, as the basement forms part of the building, it must be taken into account in relation to site coverage. In terms of permeability, the intent of this regulation is to ensure there is adequate stormwater infiltration into the soil to take the pressure of drainage systems therefore, as a basement would not permit the infiltration of stormwater it cannot be included in the minimum required area for permeability. With respect to setbacks, they are also applicable except of course the height as they are under the ground.

What changes have been made and when do they officially come into play?

The only changes that have been made to the siting requirements under Part 5 of the Regulations is the requirements for small second dwellings, which are already in effect.

Are objections to distance from neighbour's boundary considered?

Under Part 5 of the Building Regulations 2018, there is no ability to object to the distance of a building to the boundary, unless that distance does not comply with the Regulations. You can refer to Building Practice Note 47 or the upcoming SI-01 for information on the requirements for building setbacks from boundaries. If you have a concern that the distance does not meet what is set out in the Practice Note, you should contact the relevant building surveyor who has issued the building permit. You can obtain the details of who the building surveyor is from the local council.

Could you explain how existing buildings are impacted as a direct result of optimal positioning of adjoining new structures attempts to meet the design criteria? And which would take precedence?

Typically, any proposed building in the vicinity of an existing building/s should take the existing building/s on the adjoining allotments into account in terms of the siting, in accordance with Part 5 of the Regulations.

Are there any main differences between siting requirements in the NCC Volume 1 and Volume 2?

This question appears to be in relation to Volumes One & Two of the National Construction Code, which does not hold the requirements for siting. Siting for Class 1 and associated Class 10 buildings are covered under the Building Regulations 2018 and other buildings under planning.

Can we consult with a building surveyor at the design stage to confirm Part 5 compliance, i.e. prior to engaging building surveyor at permit stage?



You can consult with a building surveyor at design stage, however, you are unable to consult with the same building surveyor who is appointed to issue the building permit. The [VBA Code of Conduct for Building Surveyors](#) defines the difference between a consultant building surveyor and the relevant building surveyor and advises that they cannot be the same.

Do Green Wedge Zone Dwellings (with planning permits) need to comply with Part 5? When a DDO planning overlay covers a same siting matter like heights to setbacks (however no reference to Section 54), can the RBS assume Regulation 79 has been assessed?

Where the planning permit regulates the same matter under Part 5, then compliance with the regulation is not required. However, where it does not regulate the same matters, the regulations must be complied with. The RBS should consult with council where it is not clear whether particular siting matters have been addressed under the planning permit.

In regard to the 1m clear to the sky requirement of Reg 85, is the 1m dimension required in width or length or doesn't matter? For example, an external wall with a 1m side setback for the length of the wall but with a 450mm eave.

The 1m "clear to the sky" requirement is measured perpendicular, or 90 degrees to the boundary.

In the context of a hay shed being built on a large vacant allotment (e.g. 100 hectare farming zone block), can the wording of Reg 87 that "...a Class 10a building that is appurtenant to a building of another class..." be interpreted that the Class 10a hay shed is not intended to ever be "appurtenant" to another building and Report & Consent is not required?

In terms of a hay shed, you can construct a hay shed on a vacant allotment under Regulation 87, as the regulation is only applicable where the Class 10a "is" appurtenant to a building of another class.

How will the new NCC 2022 fit in small size blocks? Example 234 sqm, 264 sqm etc. Size of the house will be drastically reduced. Are they permitting to build more building space for small size blocks?

The NCC does not govern the requirements for the siting of buildings which are instead included under Part 5 of the Building Regulations 2018. These regulations apply to the construction of a single Class 1 and associated Class 10 building. However, where a planning permit is required that regulates the same siting matters, the regulations do not apply. The sizes of the allotments you refer to will most likely be handled under planning, but if not, the building regulations would still apply. As outlined in the webinar, Schedule 6 of the Building Regulations also applies which allows council to specify their own requirements.

Do existing fences under 2m in height get taken into consideration for the purposes of overshadowing?

Yes, as you must determine how much sunlight is provided to the RPOS on the adjoining allotment, the shadows cast by all fences in the vicinity of the RPOS should be taken into account.

When will the amended Siting Practice Note be released?

The amended practice note for siting will be released in the coming weeks and will have a new number titled SI-01.



How should overshadowing be interpreted? For example, the proposed dwelling creates additional shadowing at 9am and the adjoining RPOS does not achieve the minimum amount of sunlight, but there is no shadowing from the proposed dwelling for 5 hours between 10am – 3pm.

If any of the hours between 10am – 3pm do not achieve the minimum amount of sunlight:

a) does this trigger a non-compliance at 9am? or

b) is this considered compliant since there is no encroachment from the proposed dwelling for 5 hours between 10am – 3pm?

This would trigger a non-compliance as you cannot further encroach at all between 9am-3pm if the adjoining allotment does not achieve the minimum amount of sunlight

Regulation 75(3) - if a wall on or within 200mm of the boundary does not comply with Regulation 80, is this regulation considered not applicable?

For example, a proposed wall on or within 200mm of the boundary does not comply with Regulation 80 as the average wall height is 3.3m in lieu of the maximum 3.2m.

The roof height of the proposed wall on boundary at 1m from the boundary is 3.7m.

a) is this non-compliant with Regulations 75(3) and 80? or

b) is Regulation 75(3) not applicable since the wall does not comply with Regulation 80?

Regulation 75(3) is not applicable. However, neither is regulation 79(5) therefore, a report and consent will be required for both regulation 79 & 80.

Is a report and consent under Regulation 75(3) & 80 required when a wall within 1m of the boundary exceeds 3.6m or is it only required under Regulation 80?

If it applies to a wall on or within 200mm of the boundary, then a report and consent is required under both regulation 75(3) and 80.

How do the new regulations relate to building in heritage areas?

The only new regulations are for small second dwellings however, this subject was not covered in this webinar and there is a separate webinar to cover this. The heritage requirements remain the same.

Is there an easy way to calculate average wall height on boundary for a sloping site?

The average height is calculated by dividing the total area of the wall by the length of the wall. The area of a wall on a sloping site can be calculated by breaking up the wall into parts such as squares, rectangles and triangles and using Pythagoras method.

What are the constraints for carparks and standalone garages?

Carparking requirements are set out in Regulation 78 of the Building Regulations 2018 and a garage can be used to meet the requirements. Garages are also subject to the setback requirements under Regulation 79 & 80.

Does commercial building (e.g. school) count as existing building to calculate the front setback from the street (using the calculation method of average between neighbours' street setback)?

No. Regulation 74 applies where there are "existing dwellings" on adjoining allotments only.



Is an unenclosed verandah located within 200mm of a side/rear boundary considered a wall on boundary? Is it required to comply with Regulation 79 or 80?

Open verandahs are not considered as a wall for the purposes of setbacks under Regulation 79 however, a verandah may encroach 500mm into the 1m required setback. If the verandah is proposed on being constructed on or within 500mm of the boundary, a report and consent from council will be required.

Regarding Regulation 83 and overshadowing private open space, how does this work in relation to the own property? Does it require minimum sunlight or can it be compromised?

Regulation 83 only applies to the shadows cast by the proposed building on to the adjoining allotment and does not apply to the same allotment as the proposed building.

In Regulation 79 allowable encroachments, a verandah can encroach up to 500mm, but there is no mention of maximum height. Can a verandah 3.6m high encroach into the side setback 500mm with a building height of 3.6m?

There is no height specified for a verandah encroachment of up to 500mm into the required 1m setback under Regulation 79, however, as the setback at the 1m point has a height restriction of 3.6m, the 500mm verandah encroachment could be at the same height of 3.6m.

MG-12, Reg 89, noise intrusion is now a required criterion. Why is this changed, and what are the parameters/type of noise to assess this?

Noise intrusion under MG-12 is justification for report & consent for front fence heights. This could be for example that the front fence needs to be raised because of excessive traffic noise.

How do we determine the siting requirements of max and min setbacks for a battleaxe allotment?

For maximum street setback, battleaxe allotment is defined under Regulation 73 as the front street alignment being the boundary between the battleaxe allotment and the front allotment. Minimum setback will comply in the majority of cases, as the building will be setback the minimum required distance from the street.

If there is a boundary barrier at 1.8m at height from finishing ground level and the height of the floor room is 700mm. Can this be determined to be compliant as per Regulation 84(8)? Other experts have thrown out the idea because sometimes the new habitable window has direct line of sight to another habitable window when under these conditions.

Yes, it is possible that the 1.8m boundary barrier could be a compliant scenario if there is not a direct line of sight onto a habitable room window or secluded private open space.

When is Regulation 85 going to be amended to state only required habitable windows are to comply with Part (1) of Reg 85, and if glass doors are also required to comply with Regulation 85?

The VBA do not make the regulations. Regulations are made by the Department of Transport & Planning (DTP). You can contact DTP for any questions you may have regarding changes to regulations at: www.vic.gov.au/contact-department-transport-and-planning



Councils are often asking for building height dimensions to the top of a roof ridge on each elevation. For a hipped roof, this dimension varies between each elevation as the natural ground line on the elevation is drawn at the wall line. We use a calculated building height from ridge RL level to the NSL directly below that point as shown on the site survey.

As the maximum building height applies to any point of the building, and the definition of height with respect to the building is taken from NGL to the top of the roof covering, there may need to be multiple measurements taken to demonstrate compliance, especially where there are parts of the building that are close to the maximum building height.

Corner Block, Side Street - For the purposes of a "side street alignment" under Regulation 74, does Regulation 79 also apply to the side street alignment? Or is this not considered as a side boundary assessed under Reg 79? For example, on a corner block, provided that you have a 2m side street setback there are no height controls applicable to that face as it is not controlled under Reg 79.

Regulation 79 does not apply to the setback of a side street alignment on a corner allotment.

Regarding site setbacks, where there is a dispute over the positioning of a fence within a 7-year period (in our case 2 years and 500mm inside our client's property) can we set back from the title boundary?

While a fence may be setback from a property boundary in accordance with the regulations, it appears that this question is more in relation to a contractual matter, in which case, you will need to seek further guidance from Consumer Affairs Victoria, as they administer the *Domestic Building Contracts Act 1995*.

Reg 87, please provide an example of when report and consent from Council is required. Due to no Ministers Guidelines, what should be considered by Council staff when assessing approving or refusing Reg 87 applications for report and consent? Reg 97, masts and poles, how should Council staff assess report and consent applications for light towers above 8 metres high? There are no Ministers Guidelines, and the work usually doesn't trigger a planning permit due to it being municipal work less than 1 million dollars (or similar).

As there are no guidelines that apply in this instance, applications may be assessed totally at the discretion of the Municipal Building Surveyor.

Regarding Regulation 74 on street setbacks, consider a common situation: the front wall of a dwelling has full-height (2.7m nominal) 230mm wide masonry return walls that protrude at a 90-degree angle from the front wall by only 450mm, aligning roughly with the eave. Where should the front setback be measured from? I believe it should be measured from the actual wall forming the dwelling perimeter. These blade walls, although connected to the main wall, should be allowed to impose on the setback distance by up to 2.5m, according to Regulation 74(3) in the 2018 Regulations. Therefore, the setback distance would be measured from the front wall parallel to the street, rather than from the 230mm wide masonry blade walls.

Regulation 74 requires that a "building" must be setback from the street alignment therefore, this includes any feature projections unless they are an allowable encroachment.



Where a carport is the frontmost element of the building, I believe that the front street setback should be measured from the eave line of the roofed carport, even though it is supported by posts and has no walls facing the front street. Regulation 74(3)(a) in the 2018 regulations mentions "porches, verandahs, and pergolas" but does not specifically include roofed carports. This carport, although less than 3.6m in height, extends further than the 2.5m allowed in 74(3). Would you agree?

The front street setback must not be taken from the carport as it does not have any walls.

I have been told I require report & consent if I do not have 500mm clearance between the tank and the shed even though the shed is located several metres away from the associated dwelling.

Regulation 79 requires that a building be setback a minimum of 1m from the boundary and a water tank can only encroach 500mm into this 1m setback.

How is the siting of carport considered when the building does not contain a wall?

As a carport does not have a front wall, a carport on an adjoining allotment cannot be used to determine the setback and a carport is also not an allowable encroachment. Side and rear setbacks of the carport is required to be setback under Regulation 79 & 80.

The siting of DPU's is not regulated under both planning in Res 1 Zones, or buildings in Part 5. Will this be clarified?

The land use term and definition for 'dependent person's unit' was removed from the Victoria planning provisions and all planning schemes by Amendment VC253. Transitional arrangements meant that some proposals for dependent person's units could continue until 14 March 2024. On 28 March 2024, Amendment VC259 made further changes to the Victoria planning provisions and all planning schemes to expand the transitional arrangements until 28 March 2025. Any proposal for a dependent person's unit is subject to the same provisions that applied before Amendment VC253 was gazetted. However, from this date, DPU's are now considered to be small second dwellings and must comply with the regulations applicable under the Building Regulations 2018.

For fake wall (within front facade) extended to title boundary, do we need to apply Reg 80 (both average and max height) for its edge?

If the wall in question is on or within 200mm of the boundary, it would need to comply with Regulation 80.

Does a Tiny Home come under the provisions of the Building Act & Regulations?

The siting requirements of Part 5 apply to a tiny home if erected on an allotment.

Can you please provide a definition of 'street alignment'?

Street alignment is the boundary between the allotment and the street. In many cases this is the line between the allotment and the footpath, or nature strip if no footpath is present.

When will Schedule 6 be updated?

The VBA do not make the Regulations and they are handled by the Department of Transport & Planning (DTP). For advice on building reforms, please refer to the DTP website at www.planning.vic.gov.au/guides-and-resources/building-policy/building-reform.

**What are the minimum rear street boundary setbacks for a Class 1 and Class 10?**

There are no prescribed setbacks from rear streets. However, Regulation 79 prescribes side and rear setbacks for the building from the side or rear boundary of the allotment therefore, Regulation 79 is applicable. Where the allotment is subject to a front and rear street, the front street alignment should first be determined and is typically taken as what can reasonably be considered as architectural frontage of the building.

Regulation 85 (daylight to HRW) subclause 2 states a carport or verandah may be taken to be open if the roof covering of the carport or verandah is not less than 500mm from the boundary or another building. Is this measured to the roof covering itself or the gutter? Is the gutter allowed to encroach in this space? Or is the gutter, part of the roof covering?

As Regulation 85 applies to daylight to habitable room windows and there is no definition for "roof covering", our suggestion would be to take the conservative approach and ensure that the 500mm is taken from the gutter, as this will also ensure that the intent of the regulation is met and that council will be satisfied.

If a proposed dwelling doesn't comply with the maximum number of storeys in the planning scheme, but doesn't require a planning permit, do you consider this a breach under Part 5 (Reg 75 doesn't mandate number of storeys) or any other part of the Building Regs?

Planning schemes and Regulations are two separate requirements in most instances however, if a planning permit is not required, Part 5 of the Regulations is applicable which does not govern the number of storeys, only the maximum building height.

Does Regulation 90 apply to a balustrade and screen on a first-floor balcony or the like?

No. This is because height in relation to a fence is defined under the Regulations and is taken from the base of the fence at natural ground level (NGL) to the top of the fence therefore, as it cannot be measured from NGL as it is on a balcony, and Regulation 90 is not applicable.

If I have a planning permit endorsed in a farming zone, will I still have to comply with siting regulations?

A: If the planning permit does not cover any particular regulations that are covered under Part 5 of the Regulations, then yes, those particular regulations will still need to be complied with. For example, the planning permit covers all matters except for front street setback which has not been exempted under the planning scheme therefore, in this case, the front street setback must comply with Part 5.

Is common property defined as a "street"?

Street is defined under the Regulations and includes road, highway, carriageway, lane, footway, square, court, alley and right of way.

Is a report & consent required of Reg 87 where a building permit is proposed to be issued for both a Class 1a & separate Class 10a together?

No. A report & consent is only required where the Class 10a is NOT being constructed on the same allotment as the Class 1a.

Is a detached pier an allowable encroachment in front setback?

Unless the detached pier forms part of an allowable encroachment under Regulation 74, it must be setback the minimum required distance, as the regulation requires that "a building" must be setback.



For further information or clarification please contact the Technical and Regulation Team via technicalenquiry@vba.vic.gov.au

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