

# New Residential Zones

## Impacts of VC110 on Part 4 of the Building Regulations

Issued June 2017

### New Residential Zones

Planning Scheme Amendment VC110 approved on 27 March 2017 makes changes to the residential zones introduced in July 2014 to implement the Government's response to the recommendations made by the Managing Residential Development Advisory Committee in their report dated July 2016.

The key changes to the zones are:

- Mandatory height controls in the Neighbourhood Residential Zone and General Residential Zone;
- Controls on the maximum number of storeys in the Neighbourhood Residential Zone and General Residential Zone; and
- New minimum garden areas in the Neighbourhood Residential Zone and General Residential Zone.
- New exemption and transitional provisions.

### Mandatory building heights

Section 11 of the *Building Act 1993* may apply to certain aspects of the new zones, but not to the Schedules to the Zones. Section 11 of the Act provides that if a planning scheme contains a provision regulating the siting of buildings which is inconsistent with a requirement in the Regulations that regulates the same matter, and the inconsistency cannot be resolved, the building regulation ceases to have effect and the planning scheme requirement prevails. See below for further explanation of where section 11 of the Act will apply.

As a matter of course, building designers and building surveyors will now need to ensure relevant projects comply with the mandatory height requirements of the new zones unless the design is subject to an exemption in the zone or the transitional provisions.

### Exemptions to height requirements

The exemptions to the building height requirements have been standardised across the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Mixed Use Zone and Township Zone.

Under the new provisions a building may exceed the maximum building height specified in the zone or a schedule to the zone if:

- The slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees. A building may exceed the maximum building height by up to 1 metre.
- It replaces an immediately pre-existing building and the new building does not exceed the building height of the pre-existing building.

- There are existing buildings on both abutting allotments that face the same street and the new building does not exceed the building height of the lower of the existing buildings on the abutting allotments.
- It is on a corner lot abutted by lots with existing buildings and the new building does not exceed the building height of the lower of the existing buildings on the abutting allotments.
- It is constructed pursuant to a valid building permit that was in effect prior to the introduction of this provision.
- It is an extension to an existing building and does not exceed the building height of the existing building.

### Transitional provisions relevant to building

The minimum garden area requirement and the maximum building height and number of storeys requirements in the NRZ and GRZ do not apply to:

- A dwelling or residential building constructed on a lot before the approval date\* of Amendment VC110.
- A planning permit application for the construction or extension of a dwelling or residential building lodged before the approval date\* of Amendment VC110.
- Where a planning permit is not required for the construction or extension of a dwelling or residential building:
  - A building permit issued for the construction or extension of a dwelling or residential building before the approval date of VC110.
  - A building surveyor has been appointed to issue a building permit for the construction or extension of a dwelling or residential building the approval date of VC110. A building permit must be issued within 12 months of approval date (i.e. on or before 26 March 2018).
  - A building surveyor is satisfied, and certifies in writing, that substantial progress was made on the design of the construction or extension of a dwelling or residential building the approval date of VC110. A building permit must be issued within 12 months of the approval date (i.e. on or before 26 March 2018).

\*Approval date is defined in the planning scheme to be the date the scheme began, or the date of notice in the Victoria Government Gazette of approval of an amendment to the scheme. In this case notice of VC110 was published in a special government gazette S95 on **27 March 2017**.

### Maximum building height requirement

Building surveyors should be familiar with the zone of the planning scheme that applies to an allotment which is the subject of a building permit application, and check Schedule 6 to the Building Regulations 2018 to determine the maximum building height requirement in relation to an allotment.

A building height specified in a schedule to any of the residential zones becomes the mandatory maximum building height. A council cannot consent to exceed the mandatory height control unless it complies with the new exemptions.

Where a zone or a schedule to a zone applies to an allotment, but is not listed in Schedule 6 to the Building Regulations 2018, the mandatory building height in the zone or the schedule to zone will apply unless the design is subject to an exemption in the zone or the transitional provisions. The report and consent of the relevant council should be obtained to build to a height that exceeds the maximum height set out in regulation 75 of the Building Regulations 2018. This will apply in the General Residential Zone where a new maximum building height of 11m is specified under the Zone.

A council cannot consent to exceed a mandatory height control imposed by the planning scheme. The new mandatory height controls are subject to new exemptions.

These new exemptions should be read as part of the prescribed maximum height requirement of a zone or the schedule to a zone.

### **Neighbourhood Residential Zone**

The maximum building height in the Neighbourhood Residential Zone (NRZ) has been raised from 8 metres to 9 metres. This maximum building height can be varied by a schedule to the zone. Certain existing schedules to the NRZ apply a maximum height of 8 metres or less. If this is the case the maximum building height set out in the schedule replaces the 9 metres mandatory height specified in the zone. If a maximum building height specified in a zone is less than the 9m maximum building height allowed under regulation 75, section 11 will apply and the inconsistency between the 9m allowed under regulation 75 and the lesser maximum height in the zone will cease to have effect. In other words, the maximum building height in the zone or a schedule to the zone cannot be exceeded.

This is a control which applies whether a planning permit is required or not. Therefore a report and consent should not be applied for as the council cannot approve a building height that exceeds the maximum height in the zone or a schedule to the zone.

### **General Residential Zone**

A maximum building height has been introduced into General Residential Zone.

The discretionary building height of 9 metres in the General Residential Zone has been changed to a maximum building height of 11 metres. This maximum building height can be varied by a schedule to the zone. A report and consent will be required in relation to a building permit application that exceeds 9m and up to a maximum of 11 metres. A council cannot consent to exceed the mandatory height control unless it complies with the new exemptions.

### **Other residential zones**

The operation of building height in the Residential Growth Zone, Mixed Use Zone and Township Zone remains unchanged.

The Residential Growth Zone has a discretionary maximum building height of 13.5 metres while the Township Zone and Mixed Use Zone have a discretionary maximum building height of 9 metres.

The maximum building height requirements in the Neighbourhood Residential Zone and General Residential Zone (or a schedule to the two zones), or a schedule to Residential Growth Zone, Mixed Use Zone and Township Zone apply whether a planning permit is required for the construction of a dwelling or not.

A building height specified in a schedule to any of the residential zones becomes the mandatory maximum building height. A council cannot consent to exceed the mandatory height control unless it complies with the new exemptions.

### **Building height if land is subject to inundation**

If the land is in a Special Building Overlay, Land Subject to Inundation Overlay or is land liable to inundation the maximum building height specified in the zone or schedule to the zone is the vertical

distance from the minimum floor level determined by the relevant drainage authority or floodplain management authority to the roof or parapet at any point instead of natural ground level.

### Inclusion of storeys into height consideration

The maximum building height controls in Neighbourhood Residential Zone and General Residential Zone have also been amended to include a maximum number of storeys.

The Neighbourhood Residential Zone includes a maximum of 2 storeys.

The General Residential Zone includes a maximum of 3 storeys.

Both the maximum building height and the maximum number of storeys must be complied with under the planning scheme. Although the maximum number of storeys requirement is not a consideration for a relevant building surveyor, if the number of storeys shown in the application for a building permit does not meet the new requirements, it is good practice to advise the client in a covering letter to the building permit that the design may be in breach of the Planning Scheme and to discuss the matter with the responsible authority.

### How is storey defined?

The planning scheme defines 'storey' as that part of a building between floor levels. If there is no floor above, it is the part between the floor level and ceiling. It may include an attic, basement, built over car parking area, and mezzanine.

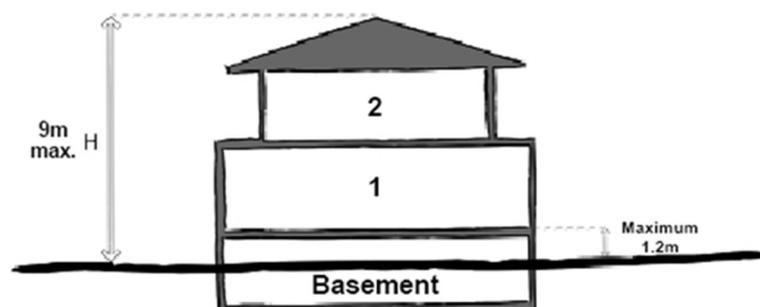
The maximum height controls in Neighbourhood Residential Zone and General Residential Zone exclude a basement from the calculation of the maximum number of storeys.

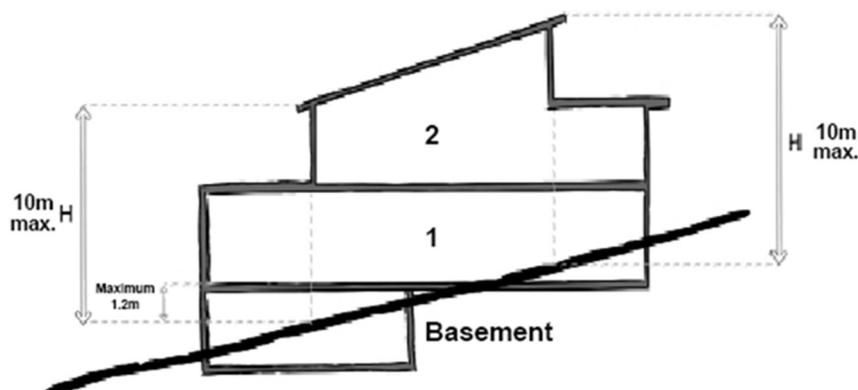
### How is basement defined?

The planning scheme defines 'basement' as a storey below ground level, or that projects no more than 1.2 metres above ground level.

The diagram below shows how the maximum building height is measured and maximum number of storeys is calculated in the Neighbourhood Residential Zone.

In the sloping site diagram below where the basement protrudes more than 1.2 metres above ground level it counts as a storey and the first storey counts as the second storey for the purpose of the maximum number of storeys.





The schedule to the Neighbourhood Residential Zone and General Residential Zone can vary the maximum number of permitted storeys.

The maximum number of storeys specified in the Neighbourhood Residential Zone and General Residential Zone, or a schedule to Neighbourhood Residential Zone and General Residential Zone applies whether or not a planning permit is required for the construction of a building.

Relevant building surveyors should be aware of these planning requirements when considering an application for a building permit.

### New garden area requirement

The Neighbourhood Residential Zone and General Residential Zone have been amended to include a new mandatory requirement for a minimum garden area to be provided for a lot 400 square metres and greater.

This requires a minimum percentage of land to be set aside for garden areas at ground level in accordance with the table below:

Lot size	Minimum percentage of a lot set aside as garden area
400 – 500 square metres	25%
501 – 650 square metres	30%
Above 650 square metres	35%

A garden area is an uncovered outdoor area of a dwelling or residential building normally associated with a garden. It includes open entertaining areas, decks, lawns, garden beds, swimming pools, tennis courts and the like.

A garden area does not include a driveway, any area set aside for car parking, any building or roofed area and any area that has a dimension of less than 1 metre.

The mandatory requirement applies to the construction or extension of a dwelling or a residential building on a lot whether a planning permit is required or not.

The requirement does not apply to the construction or extension of a dwelling or a residential building on a lot less than 400 square metres.

However, if the lot is vacant and has been created by a subdivision permit issued after the new garden requirement came into operation on 27 March 2017 it may be affected by the minimum garden area requirement.

Although the minimum garden area requirement is not a consideration for a relevant building surveyor, if the garden area shown in the application for a building permit does not meet the new requirements, it is good practice to advise the client in a covering letter to the building permit that the design may be in breach of the Planning Scheme and to discuss the matter with the responsible authority.

### **Subdivision of vacant land**

An application to subdivide land that creates a vacant lot capable of development for a dwelling or residential building, must ensure that each lot created contains the minimum garden area set out in the table above.

Where a vacant lot less than 400 square metres is created, that lot must contain at least 25 percent of the lot as garden area. This does not apply to land where an approved precinct structure plan or an equivalent strategic plan applies.

If a vacant lot is created that is less than 400 square metres and is subject to the minimum garden area requirement, the council may impose this requirement through some form of restriction on title such as a covenant, legal agreement or building envelope.

Building surveyors should advise a building permit applicant that a minimum garden area requirement may apply to a vacant lot less than 400 square metres if the land was subdivided on or after 27 March 2017. The building permit applicant should make their own enquiries to ensure that the proposed development complies with the requirements of the planning scheme as it applies to the relevant allotment.