VICTORIAN BUILDING AUTHORITY

BUILDING PRACTICE NOTE

Siting SI01 | Siting of Class 1 single dwellings, Class 10a buildings and fences

UNDER REVIEW

Audience

The audience/s for this Practice Note include/s:

- ☒ Architects/ Designers
- ☒ Builders
- ☒ Building Surveyors/ Inspectors
- ☐ Engineers
- ☒ Home Owners / Residential Tenants
- ☒ Owner Builders
- ☐ Plumbers
- ☐ Real estate management agents
- ☐ Trades and Maintenance (inc. Electricians)

Purpose

This Practice Note provides guidance on Part 5 of the Building Regulations 2018.

The content below provides guidance on:

- Introduction to siting controls
- Application of Part 5 of the Building Regulations 2018
- Guidance on the operation of siting regulations

Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993, the Building Regulations 2018, or the National Construction Code.

- **Act –** Building Act 1993
- **Part 5 –** the part in the Building Regulations 2018 that contain regulations relating to the siting controls
- **Planning –** Regulatory framework under the Planning and Environment Act 1987 including planning permits. Distinct from the building regulatory framework.
- **RBS –** Relevant building surveyor
- **Regulations** – Building Regulations 2018
- **SSD** - A small second home is a dwelling that is 60 square metres or less with a kitchen, bathroom, and toilet, located on the same lot as an existing home. A small second home must not be connected to reticulated natural gas and does not require a car parking space.

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Introduction

The construction of a single Class 1 building (such as a detached house, townhouse, terrace house, or villa unit) or a fence generally does not require a planning permit. However, it is important to consider any planning controls that apply, especially when developing townhouses or terraces with two or more dwellings on a lot, on lots under 300sqm, or where an overlay requires a Planning Permit (PP) for SSD construction or use. This guidance covers single dwellings (SI01) and clarifies the applicable siting requirements for SSDs (SI03).To ensure that the construction of Class 1 buildings and fences maintains the neighbourhood character, building regulations include controls similar to those in the planning framework. Therefore, even if a planning permit is not usually required for building a single dwelling on a residential lot, the equivalent siting controls will still be enforced through building regulations.

The siting regulations contain requirements relating to:

- 73 – Maximum Street setback
- 74 – Minimum street setback
- 74A – Building setback for small second dwellings
- 75 – Building Height
- 76 – Site coverage
- 76A – Minimum garden area
- 77 – Permeability
- 78 – Car parking
- 79 – Side and rear setbacks80 – Walls and carports on boundaries
- 81 – Daylight to existing habitable room windows
- 82 – Solar access to existing north-facing habitable room windows
- 83 – Overshadowing of recreational private open space
- 84 – Overlooking
- 85 – Daylight to habitable room windows
- 86 – Private open space
- 86A – Private open space for small second dwellings
- 86B – Accessibility for small second dwellings
- 87 – Siting of Class 10a buildings
- 89 – Front fence height
- 90 – Fence setbacks from side and rear boundaries.
- 91 – Fences on or within 150 mm of side or rear boundaries
- 92 – Fences on intersecting street alignments
- 93 – Fences must not include barbed wire
- 94 – Fences and daylight to habitable room windows in existing dwelling
- 95 – Fences and solar access to existing north-facing habitable room windows
- 96 – Fences and overshadowing of recreational private open space
- 97 – Masts, poles etc.

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Small Second Dwellings

Second small dwellings up to 60m², do not require planning permits in most cases, provided there are no flooding, environmental, or other special planning controls. However, SSDs are still classified as Class 1a buildings and require a building permit. The Part 5 siting regulations also apply to SSDs. The table below outlines the relevant regulations for principal dwellings and SSDs.

More information on SSDs can be found in VBA practice note S1-03 SSDs.

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Regulation	Principal Dwelling	SSD
73 – Maximum street setback	✓	✗
74 – Minimum street setback	✓	✓
74A – Building setback for SSD	✗	✓
75 – Building height	✓	✓
76 – Site coverage	✓	✓
76A – Garden area	✓	✓
77 – Permeability	✓	✓
78 – Car parking	✓	✗
79 – Side and rear setbacks	✓	✓
80 – Walls and carports on boundaries	✓	✓
81 – Daylight to existing habitable room windows	✓	✓
82 – Solar access to existing north-facing habitable room windows	✓	✓
83 – Overshadowing of recreational private open space	✓	✓
80 – Walls and carports on boundaries	✓	✓
81 – Daylight to existing habitable room windows	✓	✓
82 – Solar access to existing north-facing habitable room windows	✓	✓
83 – Overshadowing of recreational private open space	✓	✓
84 - Overlooking	✓	✓
85 – Daylight to habitable room windows	✓	✓
86 – Private open space	✓	✗
86A – Private open space for small second dwellings	✗	✓
86B - Accessibility for small second dwellings	✗	✓

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Requirement for information

Regulation 24 stipulates that an application for a building permit must contain sufficient information to show that the proposed building work will comply with the Act and the Regulations. Further, section 24 of the Act states that a relevant building surveyor (RBS) must not issue a building permit unless they are satisfied that the building permit and building work will comply with the Act and Regulations.

Pursuant to section 24(1)(c) & (d) of the Act, the RBS must determine whether a planning permit is required for the work, and if it is, must ensure that the building permit application is consistent with the planning permit.

In the case of an application to build or renovate a single dwelling or associated Class 10a building, if a planning permit is not required, the building permit application must contain sufficient details about siting matters to show that Part 5 of the Regulations or any other applicable planning scheme provisions will be complied with.

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Regulation 25 requires, among other matters, that siting information be shown on an allotment plan accompanying an application for a building permit. Specifically, Regulation 25(2) requires the application to include:

- Information about impermeable surfaces
- Location and dimensions of car parking spaces (unless the proposed structure is a SSD)
- Location, dimensions, and area of private open space on the allotment

Regulation 25(2)(c)(iii) requires information to be provided about any existing buildings on adjoining allotments. This includes information regarding the existing dwellings secluded private open space and recreational private open space on the adjoining allotment.

In addition, Regulation 86A specifies that where a small second dwelling is proposed to be constructed, it must have its own private open space of at least 8 m² with a minimum dimension of 1.6 m and have convenient access from a habitable room (other than a bedroom). This requirement is in addition to the private open space required for the existing (original) dwelling on the allotment. The exception set out in Regulation 86(2)(b) applies specifically to the private open space requirements of the original dwelling when the SSD has been constructed on the same allotment.

Obtaining information from councils

There will be times when it is difficult for the RBS to be certain about whether a requirement in a planning scheme applies instead of a requirement in Part 5. RBSs are encouraged to seek clarification from the relevant council about the siting requirement that applies or what the siting requirement is under the planning scheme.

When engaging with councils, the RBS should keep records of the advice sought.

Siting definitions

The following definitions are used throughout various siting regulations.

Clear to the sky

"Clear to the sky" is defined in Regulation 5. In relation to an area, it means an unroofed area, or an area roofed with a material that transmits at least 90% of light, such as a polycarbonate roofing system. Several provisions in Part 5 require a light court that is clear to the sky with a minimum dimension of 1 meter. For the purposes of measuring the dimension of a light court, gutters or spouting cannot be included in the 1-meter dimension.

Height

"Height" is defined in Regulation 5. It is the vertical distance between the natural ground level at the base of a building, wall, or fence, and the top of the structure. For a building, it would be the top of the roof. For a wall, it would be where the wall intersects the roof or the top of the parapet. For a fence, it would be the top of the fence. Chimneys, flues, and service pipes are not included when measuring heights.

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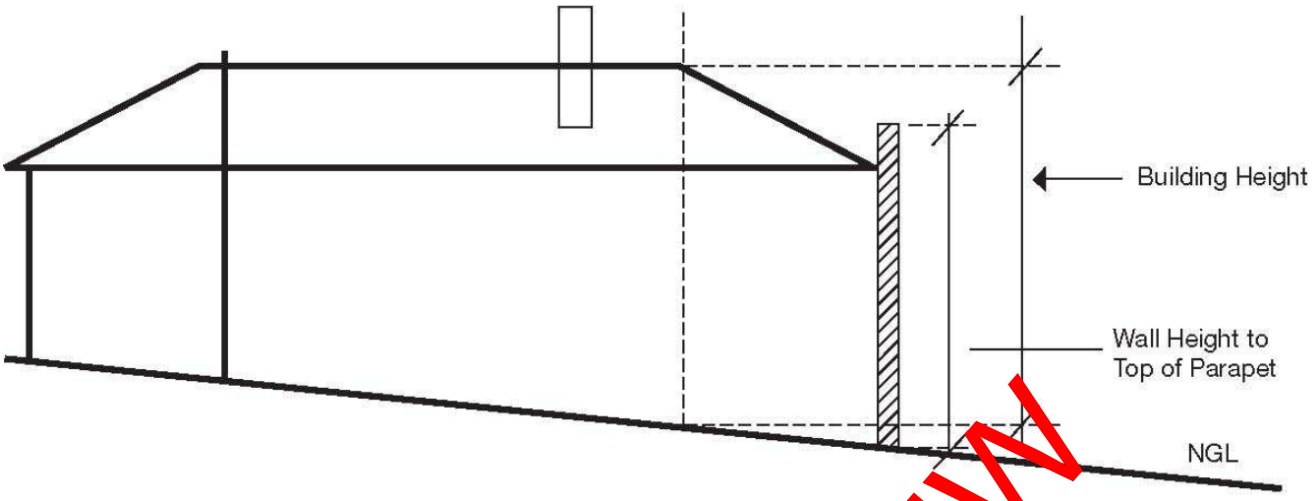
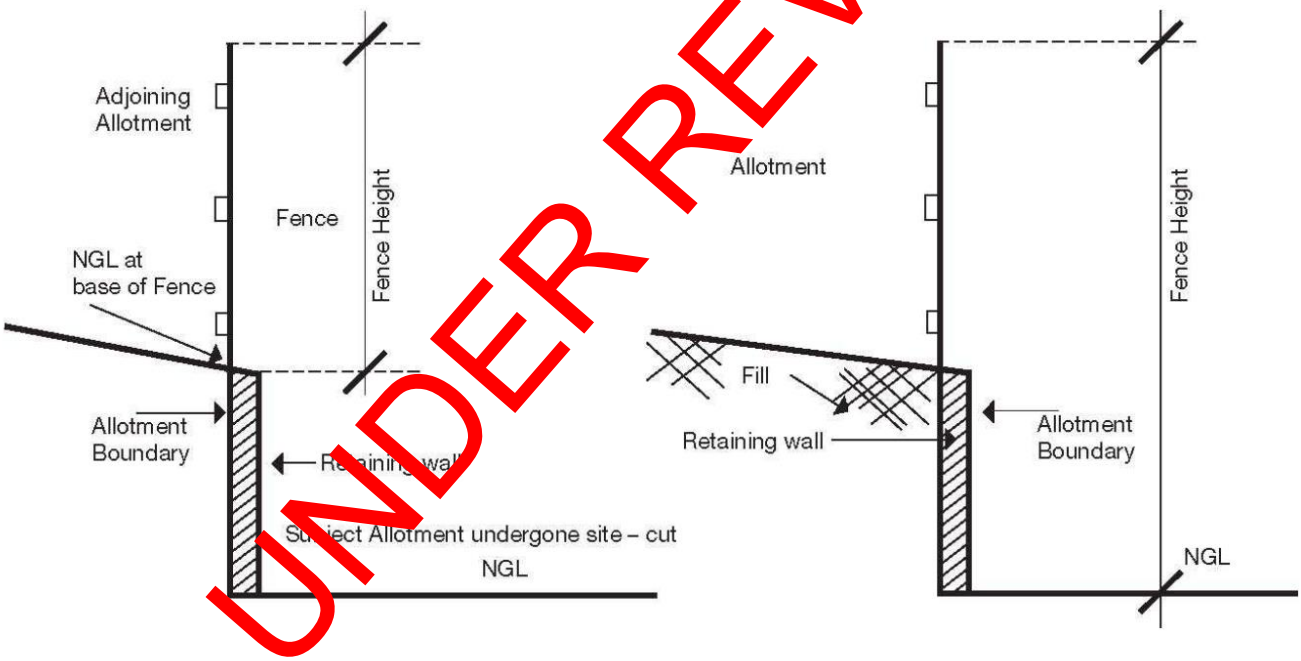


Figure 1 – Building height
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Figure 2 – Fence height
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Natural ground level

Natural ground level is not defined in the Regulations. It can be difficult to ascertain the natural ground level when the subject allotment has undergone a cut and fill or other earthworks. Natural ground level may be taken as being any line across the allotment that connects any two points, either within the allotment, or on adjoining allotments, that can be reasonably regarded as being natural ground level.

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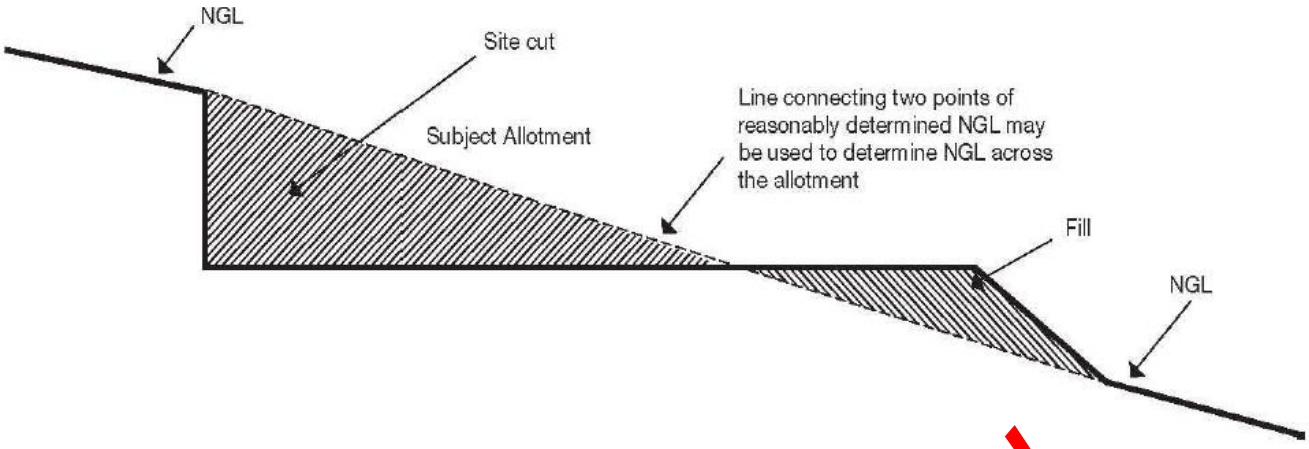


Figure 3 – Natural ground level
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Application – where a planning permit is required and the same matter in Part 5 of the Regulations have been assessed

Regulation 68 stipulates that Part 5 of the Regulations does not apply to the construction of a building if a planning permit is required and the relevant planning scheme already covers the same siting matter. Therefore, if a planning permit has been issued and the siting matters in Part 5 have been considered, there is no need to assess them again during the building permit process, except to ensure consistency between the building permit documents and the planning permit documents (see section 24(1)(d) of the Act).

However, it is important to understand that sometimes a planning permit can be required, but the planning permit process will not include an assessment of the siting matters in Part 5 of the Regulations. In these cases, a Part 5 assessment will still apply. The RBS may need to seek advice from the council about whether the planning permit assessed the same matters that are in Part 5 to ensure that they understand clearly whether they must apply Part 5 regulations when assessing the building permit application.

Example 1: A planning permit is required, and because the allotment is subject to a neighbourhood character overlay or the lot is 300m² or less, all matters in Part 5 are assessed. The RBS does not need to apply Part 5, but they do need to ensure the application is consistent with the planning permit.

Example 2: A planning permit is issued because the allotment is in a bushfire management overlay. None of the siting matters covered by Part 5 have been considered when that planning permit was issued. Part 5 of the Regulations will apply, and the RBS must ensure that the requirements in Part 5 will be reflected in the building permit for the work. Advice can be sought from the relevant council to confirm this is required.

Example 3: Under a planning permit, a 1.5m high front fence has been allowed on a corner allotment. The fence must still comply with Regulation 92, which requires a maximum height of 1m within 9m of a point of intersection of street alignments. The report and consent from the relevant council would be required if the applicant wants a higher fence within 9m of the intersection.

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Application – where a planning permit is not required but the planning scheme regulates the same matter as in Part 5 of the Regulations

Some regulations in Part 5 stipulate that where a siting requirement is specified in a planning scheme set out in Schedule 6 of the Regulations, the requirement in the planning scheme must be met, even if a planning permit is not required for the construction of that building.

The provisions that have this requirement are:

- Regulation 74 – minimum street setbacks
- Regulation 75 – building height
- Regulation 76 – site coverage
- Regulation 77 – permeability
- Regulation 79 – side and rear setbacks
- Regulation 80 – walls and carports on boundaries
- Regulation 86 – private open space; and
- Regulation 89 – front fence height.

The requirements in each planning scheme may vary and the RBS should seek advice from the relevant council about the requirements in that municipality. Alternatively, the planning scheme can be accessed and reviewed by the RBS at www.planning.vic.gov.au/planning-schemes

Report and consent – Minister's Guideline 12 – Regulation 68(2)

If an applicant cannot meet a siting requirement in Part 5, an application can be made to the relevant council to seek its report and consent to a variation from the requirement for most siting matters. However, this is not possible for certain regulations, such as Regulation 76A (minimum garden area), which is a mandatory requirement.

Minister's Guideline MG-12 Siting and Design of Single Dwellings, made under section 188A of the Act, sets out considerations that a relevant council must have regard to when considering an application for report and consent under Part 5.

Note that a report and consent cannot be obtained once a building permit has already been issued. In such cases, an applicant must either comply with the Regulations or make an application to modify the relevant regulations to the Building Appeals Board under section 160 of the Act.

Application of Part 5 to existing buildings

Several of the requirements in Part 5 necessitate an assessment of an existing building on the same allotment and adjoining allotment. Regulation 69 stipulates that an existing building (including an existing dwelling and small second dwelling) on an adjoining allotment is a building:

- That was in existence in its current completed form before 1 July 1994; or
- For which there is an occupancy permit, a copy of which has been given to the relevant council; or
- For which there is a certificate of final inspection, a copy of which has been given to the relevant council (but only if that part of the building can be occupied without the need for any further certificate of final inspection); or
- That has been completed (but only if the building can be occupied without the need for an occupancy permit or a certificate of final inspection).

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Based on this definition, a building is not considered to be existing when:

- An extension to a dwelling is under construction, and the certificate of final inspection for the completion of all the works has not been given to the relevant council. For example, if a building permit has been issued for work up to the frame stage and a certificate of final inspection has been issued for that stage, that building extension part is not considered to be an existing building, as the building extension part requires a further building permit for completion and a certificate of final inspection before it can be occupied; and
- A building permit has been issued for the construction of a dwelling and an occupancy permit is required under that building permit, but the occupancy permit has not been given to the relevant council.

Each council has its own procedure for receiving occupancy permits, which will determine when an occupancy permit is considered to be given to the council.

Building envelopes

Some allotments are subject to an agreement under section 173 of the Planning and Environment Act 1987 or shown as a restriction on a plan of subdivision, which creates a building envelope. These are defined as 'approved building envelopes' under the Regulations.

Regulation 71(1) stipulates that a design for a building on an allotment subject to an approved building envelope that does not comply with a regulation in Part 5 is taken to comply, provided that the building envelope relates to the same siting matter. In such cases, the RBS must ensure that the design is consistent with the approved building envelope.

However, Regulation 71(1) does not apply to the regulations listed in Regulation 71(2) if the adjoining allotment is not subject to the same agreement under section 173 of the Planning and Environment Act 1987 or is not on the same plan of subdivision as the subject allotment.

For more information, refer to practice note SI02 - Building Envelopes.

Maximum street setback

Regulation 73 (Maximum Street setback) stipulates that a Class 1 building, other than a small second dwelling, must not be set back more than one-third the depth of the allotment unless the allotment is equal to or greater than 0.4069 hectares (1 acre or 4,046.9m²).

As this regulation only applies to a new Class 1 building, other than a small second dwelling, an extension to an existing dwelling already exceeding the maximum setback is allowable.

If the geometry of an allotment makes it difficult to comply with Regulation 73(1), the report and consent of the relevant council can be sought to allow the building to be set back more than one-third of the allotment.

Regulation 73(3) sets out how the maximum setback requirements apply to battle-axe allotments.

Minimum street setbacks

The purpose of Regulation 74 (Minimum Street setbacks) is to preserve a street's character and make efficient use of the site by requiring the setback of a new dwelling to be related to the setbacks of buildings on adjoining properties. The setbacks are measured from the wall of a building that is facing a street. For the purposes of Regulation 74, a street does not include a lane, footway, alley, or right of way.

Regulation 74(2) has a Table (Table 74) that outlines the front and side (or corner allotments) street setbacks, considering the setback of buildings on the adjoining allotment.

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Definition and clarification

'Facing' means oriented towards that street, that is, the plane of the wall is 90° or less to the street alignment. If the wall is not parallel to the street alignment, the closest part of the wall to the street alignment is the point at which the setback is measured.

'Front street' is determined in the context of the subject allotment and the proposed dwelling. The term front wall refers to the wall that presents as the architectural frontage.

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. Figures 4 and 5 illustrate examples of methods of measuring front and side street setbacks.

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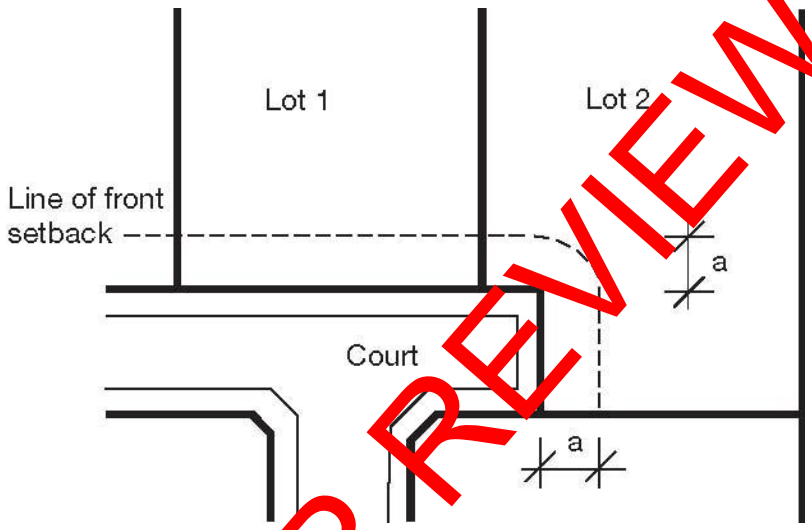


Figure 4 - Minimum Street setback court
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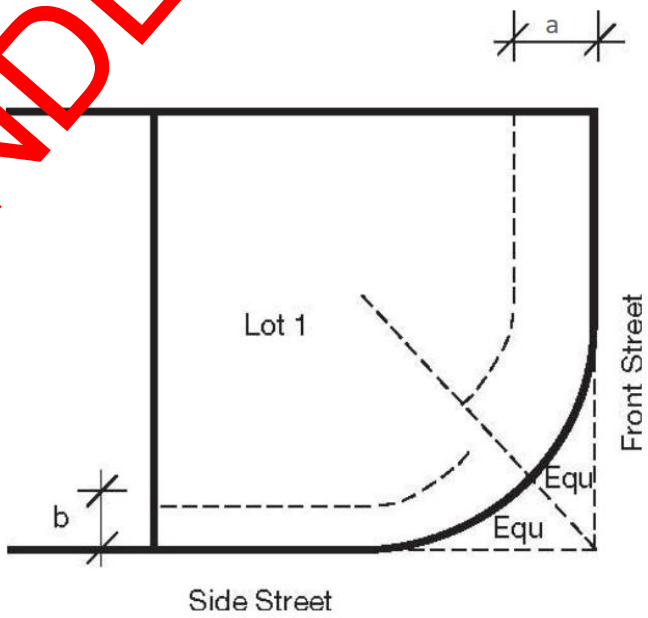


Figure 5 - Minimum Street setback curved
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Note: *Items in Figures 4 and 5 refer to:*

- 'a' is the line of minimum front street setback; and
- 'b' is the line of minimum side street setback.

Column two of Table 74 refers to the front walls of existing buildings on adjoining allotments being used to determine the average distance of the setbacks. Carports are open structures and do not have a front wall, so they cannot be used to determine the front setback for the proposed building. Garages, however, do have a front wall and can be used. Additionally, balconies, which are typically open structures and do not have a front wall, cannot be used to determine the front setback for the proposed building, regardless of whether they are less than 3.6 meters high or exceed this height.

For certain allotments, Table 74 refers to a 'declared road.' Regulation 5 defines a declared road as a freeway or an arterial road within the meaning of the Road Management Act 2004. These are important roads that connect major regions, such as freeways and arterials, and the roads that connect them. VicRoads provides a web-based map of declared roads.

Regulation 74(3) stipulates that a porch, pergola, or veranda with a height less than 3.6m can encroach up to 2.5m into the required setback. If a porch, pergola, or veranda includes decks, steps, or landings, Regulation 74(3)(c) limits the height of the decks, steps, or landings to less than 800mm.

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Building height

The purpose of Regulation 75 (Building height) is to preserve the street's character and prevent excessively bulky and tall buildings. Regulation 75(2) allows a maximum building height of 9m for most sites.

Where the slope of the natural ground level is 2.5° or more at any cross section of the site wider than 8m, a maximum building height of 10m is permitted. Figure 6 illustrates how building height is determined.

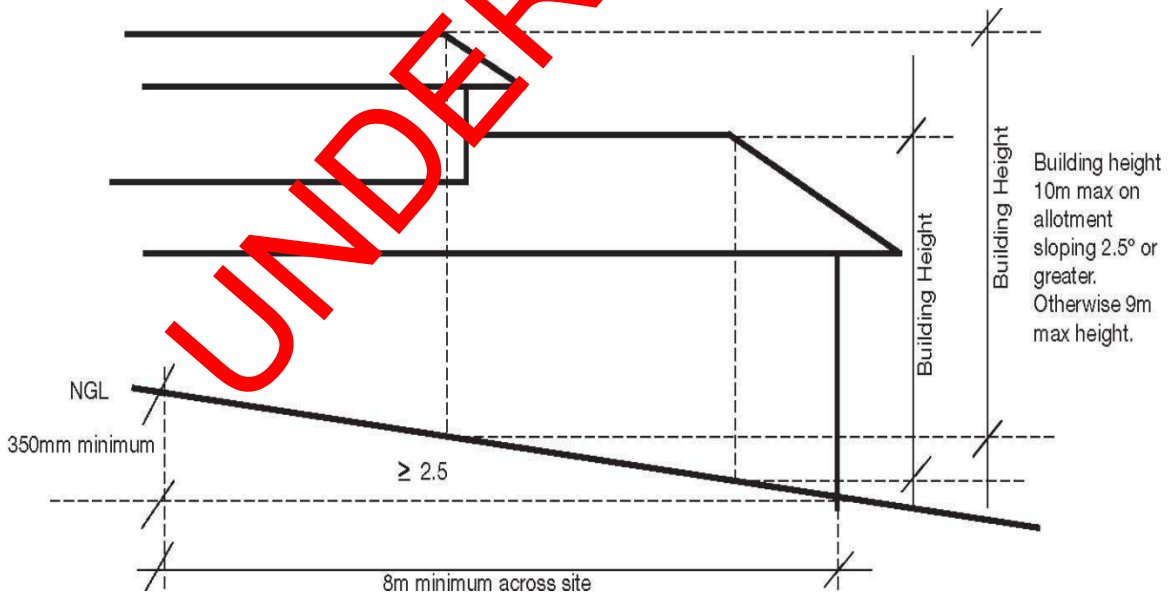


Figure 6 - Regulation 75(2) maximum building height
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The purpose of regulation 75(3) is to control the height of the part of a building that is within 1m of a boundary and adjacent to a boundary wall on the subject site. Refer to Figure 7, illustrating the operation of regulation 75(3).

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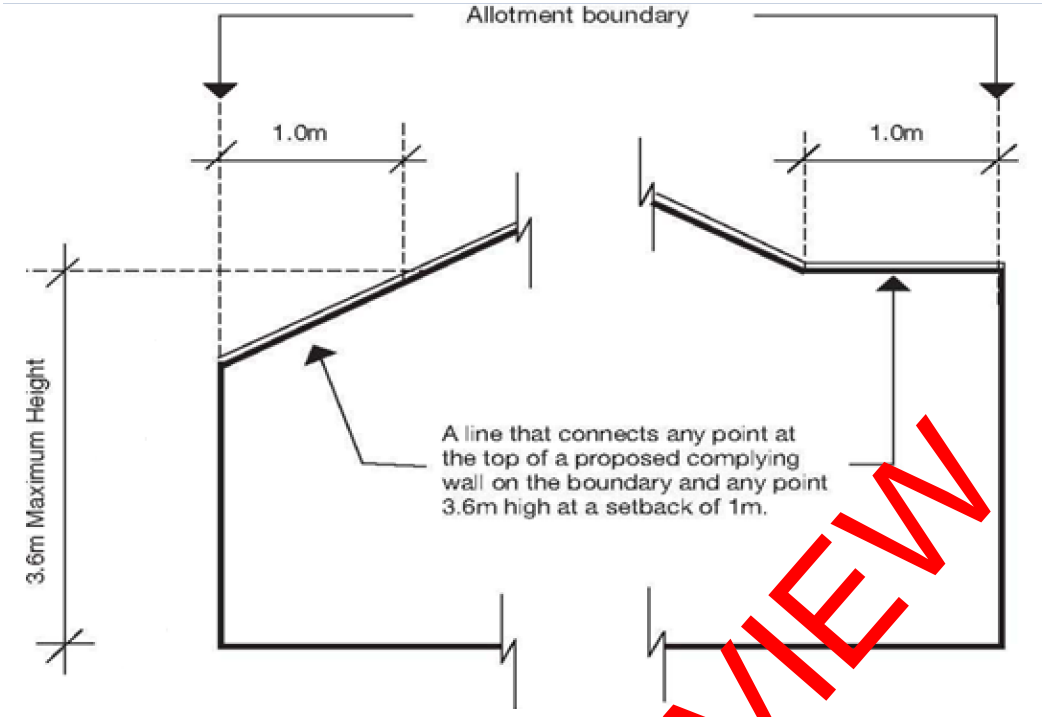


Figure 7 - Regulation 75(3) building height
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Site coverage

The purpose of regulation 76 (Site coverage) is to prevent excessive bulk and to ensure adequate outdoor space is provided on an allotment. Regulation 76(2), when calculating site coverage, all existing buildings must be included.

Sub-regulation (3) outlines items that may be disregarded when calculating site coverage, such as unroofed swimming pools or spas, unroofed terraces, decks or patios and pergolas.

Minimum garden area

Regulation 76A (Minimum Garden area) requires a minimum garden area depending on the area of the allotment outlined in the table 1. However, it does not apply if the allotment had less garden area than the minimum required under the planning scheme applying to the allotment on 27 March 2017.

Lot size	Minimum percentage of a lot allocated for garden space
400-500m²	25%
500-650m²	30%
Above 650m²	35%

Table 1 - Minimum garden area
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Garden area is defined in Regulation 76A(3) as having a minimum dimension of 1m and not including an area covered by a building, a driveway, or an area set aside for car parking. Exceptions to this definition, set out in Regulation 76A(4), include, among other constructions, a Class 10a building not exceeding 10m² in area, and a Class 10b or Class 10c structure.

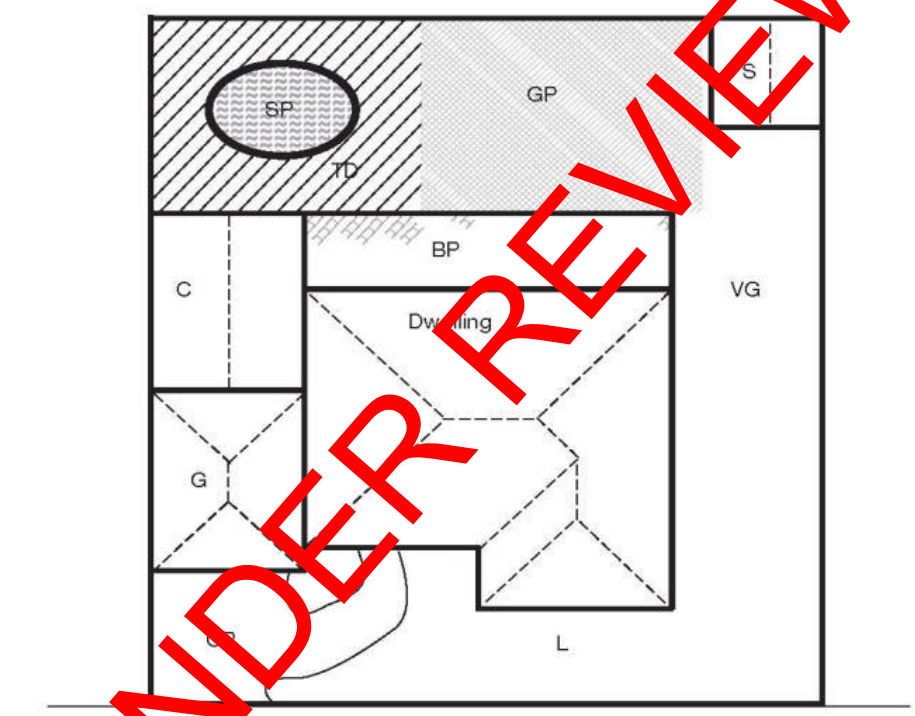
Permeability

Regulation 77 (Permeability) requires a certain percentage of the allotment to be permeable. Permeable surfaces allow stormwater to infiltrate on-site, reducing the amount of water entering public drainage systems.

A permeable surface is one that allows liquids to pass through it. Materials laid on a compacted base will lose their permeability.

Refer to Figure 8 for an example.

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Permeable		Impermeable	
TD	Timber Decking (with gaps)	BP	Brick Pavers
L	Lawn	CP	Concrete Paving
GP	Grass Paver	SP	Swimming Pool
VG	Vegetable Garden	S	Shed
		G	Garage
		C	Carport

Figure 8 – Regulation 77 Permeability example
Produced by VBA

Car parking

Regulation 78 (Car parking) requires that dwellings, other than small second dwellings, have and maintain at least 2 car parking spaces. Car parking spaces can be anywhere on an allotment. However, a car parking space must be accessible from the street and be fully contained within the allotment.

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The regulation sets out the minimum dimensions for the 2 required car parking spaces. If the 2 spaces adjoin each other in a carport or garage, dimensions for the combined space are specified. These dimensions must be calculated based on the internal dimensions of that structure.

Refer to Figure 9 for dimensions of car parking spaces.

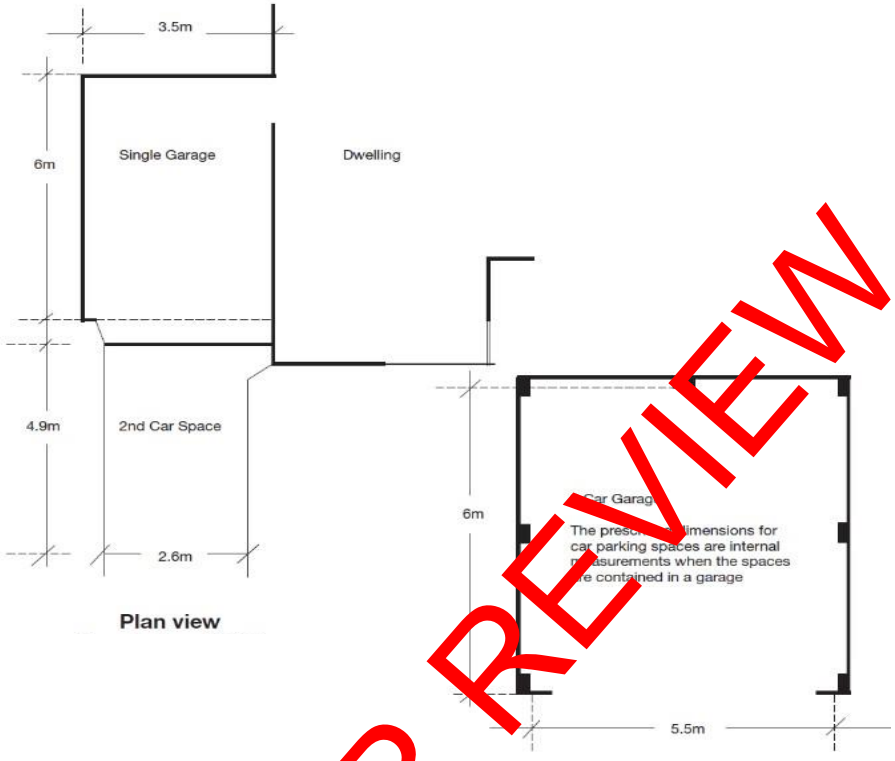


Figure 9 – Regulation 78 Dimensions for car parking spaces
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Side and rear setbacks

The purpose of regulation 79 (Side and rear setbacks) is to provide adequate separation (height and setback) between buildings on adjoining allotments, particularly above ground floor level.

The minimum building side or rear setback commences at a 1m setback from the boundary and allows a maximum building height of 3.6m at that point and incrementally increases as per Table 79 of regulation 79. Note that a wall may be on or within 200mm of the boundary if it complies with regulation 79(5) and 80.

Refer to Figure 10 for an illustration of regulation 79 and 80.

Other relevant regulations that affect the siting of buildings relative to the side and rear boundaries are—

- regulation 80 for walls and carports constructed on or within 200mm of a boundary,
- regulation 75(3) for that part of a building that is adjacent to a wall on a boundary and within a 1m setback, and
- regulation 82 for setbacks of walls opposite north-facing windows.

Where there is an existing north-facing window on an adjoining allotment, regulation 82 and 79 are relevant and both must be assessed for compliance. Regulation 82 should be assessed first as the

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setback required is greater than that required by regulation 79. The greater set back requirement must be applied.

Sub-regulations (3) and (4) list allowable encroachments into the setbacks.

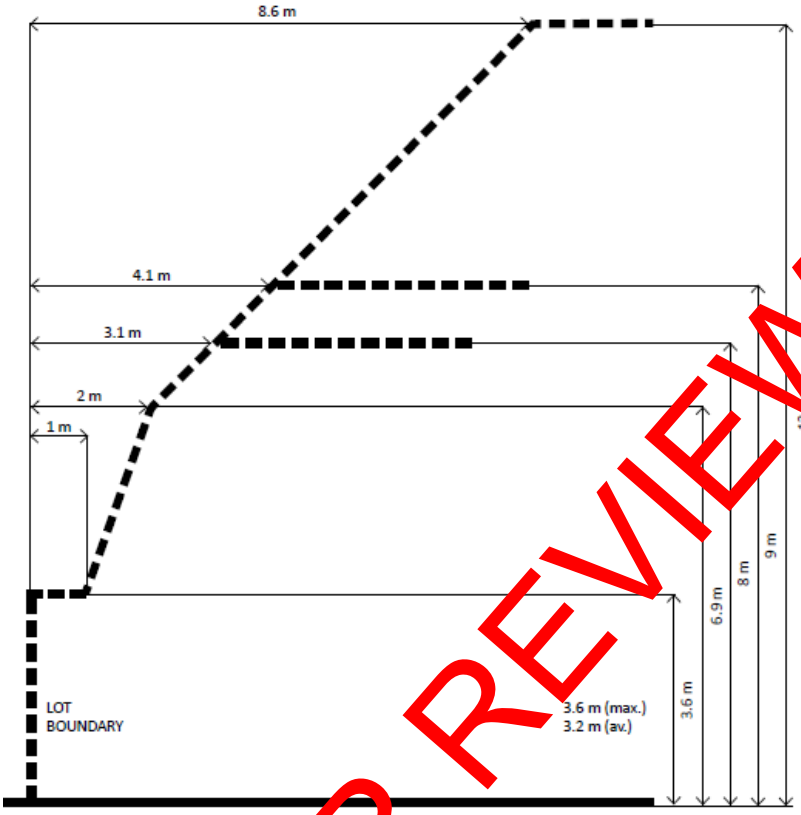


Figure 10 - Regulation 79 and 80
Produced by VBA

A report and consent will be required where the maximum building height has been exceeded as shown in Figure 10.

Walls and carports on boundaries

Regulation 80 (Walls and carport on boundaries) protects the amenity of adjoining allotments by limiting the height and length of walls or carports that will be on or within 200mm of an adjoining allotment boundary.

Figure 10 above illustrates that a wall or carport, on or within 200 mm of the adjoining allotment boundary, must not exceed a maximum height of 3.6 m and average height of 3.2 m.

Figures 11, 12 and 13 illustrate how the maximum length is calculated for different scenarios.

The maximum allowable length of all walls built on the boundary can be calculated as follows:

$$a + b + c \leq 10 + [0.25\ (d-10)]$$

where d = boundary length.

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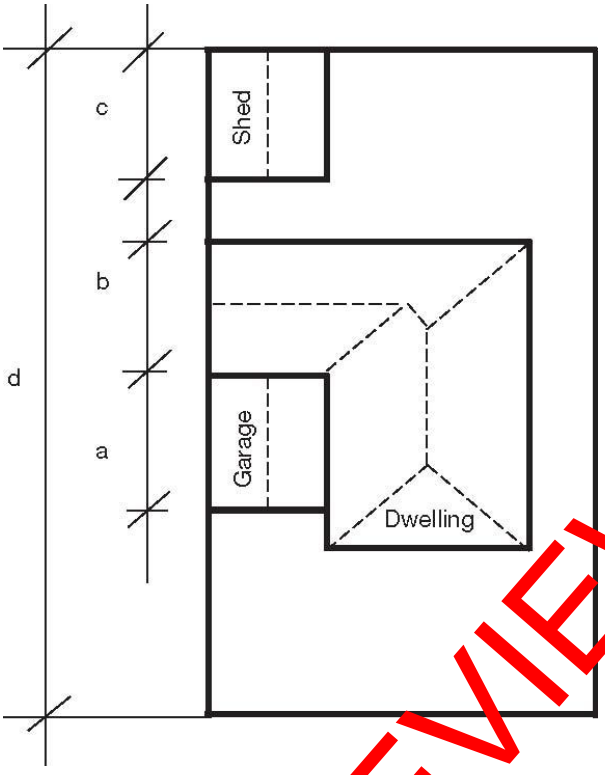


Figure 11 - Length of walls and carports on boundary
Produced by VBA

The proposal in Figure 12 below does not comply because:

- the portion of the proposed dwelling wall marked **'a'** is not abutting an existing wall or a carport on an adjoining allotment; and
- the length of the proposed wall is greater than 10m plus 25% of the remainder of the length of the boundary **'b'**.

The proposal can only proceed if a report and consent is granted by the relevant council.

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DOES NOT COMPLY

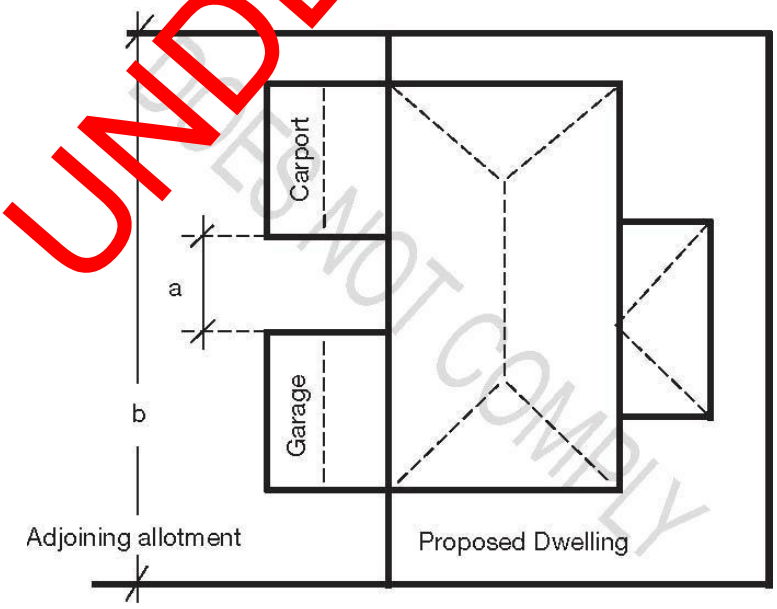


Figure 12 – Regulation 80(3)(b) walls on boundaries
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Figure 13 shows how regulation 80 applies when the boundary of the subject allotment is shared with 2 adjoining allotments.

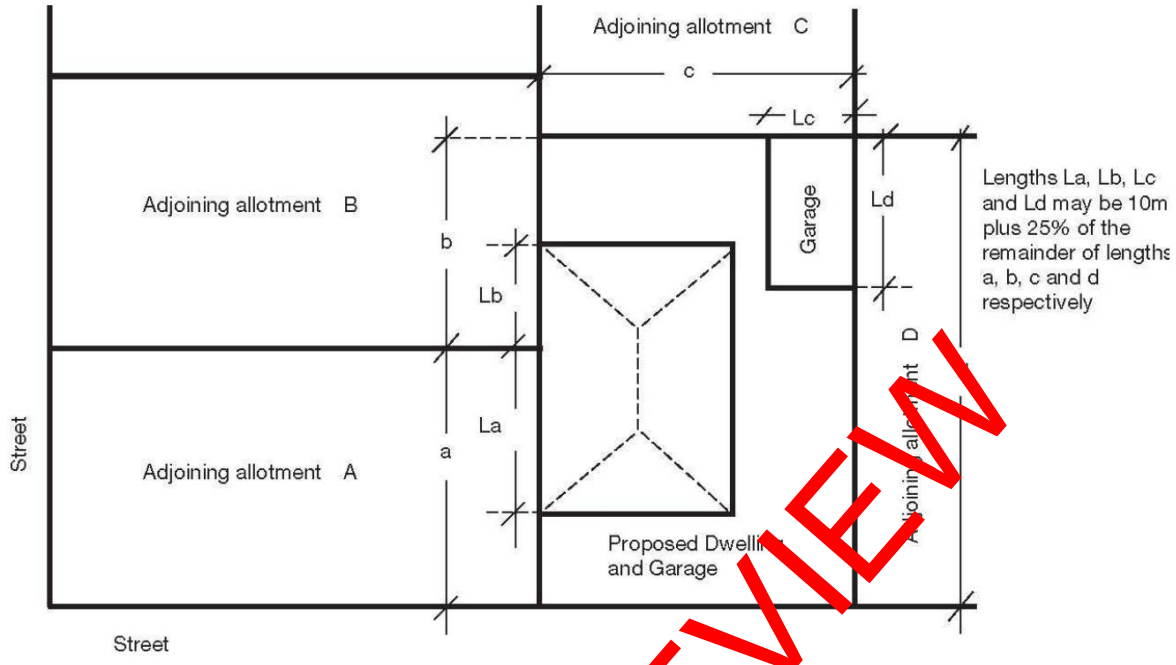


Figure 13 - Regulation 80 multiple adjoining allotments
Produced by VBA

Regulation 80(4) limits the height of the wall or carport to 3.6m and average height to 3.2m. The average height is calculated by dividing the total area of the wall by the total length of the wall.

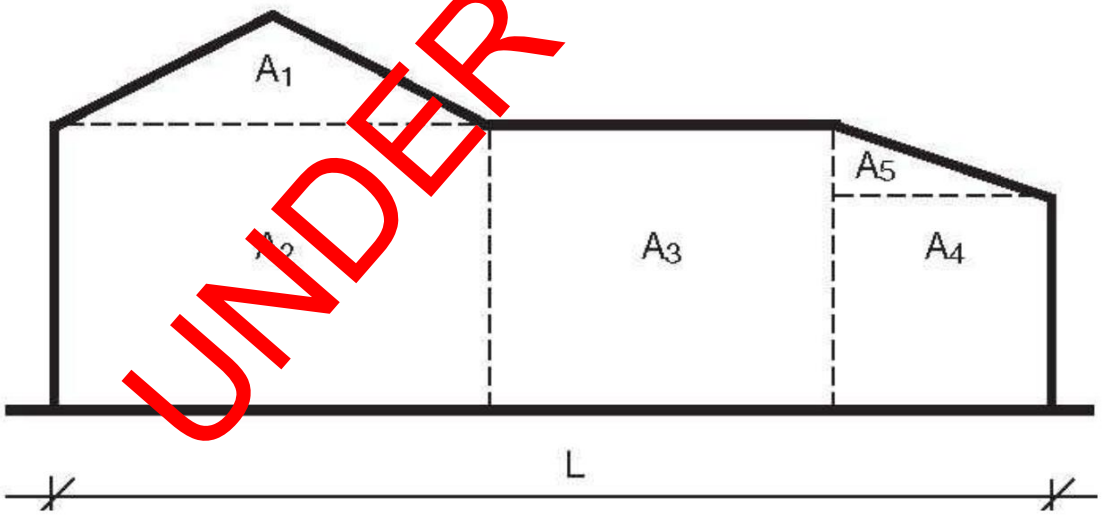


Figure 14 – Regulation 80(4) Average height
Produced by VBA

The average wall height (H) can be calculated as follows:

$$H = \frac{A_1 + A_2 + A_3 + A_4 + A_5}{L}$$

where $A_1 + A_2 + A_3 + A_4 + A_5$ equals the area of the wall.

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Despite regulation 80(4), regulation 80(5) allows a wall or carport abutting an existing wall or carport on the adjoining allotment to be built to the same height as the existing wall or carport. This means the proposed and existing wall or carport share the same part of the boundary.

Daylight to existing habitable room windows

The purpose of regulation 81 (daylight to existing habitable room windows) is to ensure adequate daylight is provided to existing habitable room windows of an existing dwelling on an adjoining allotment. Figures 15 and 16 illustrate the operation of regulation 81.

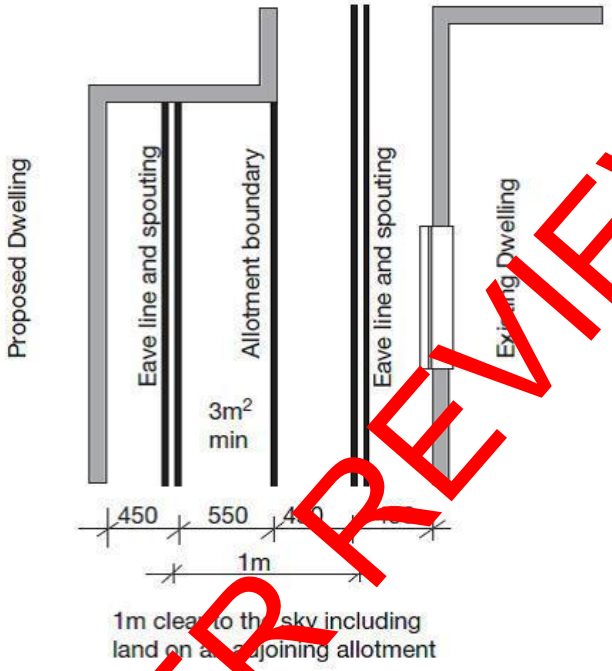


Figure 15 – Regulation 81(1)
Produced by VBA

Like the outside eave and spouting lines shown in Figure 15, where a habitable room window in an existing dwelling on the adjoining allotment has a veranda, carport or similar roofed structure constructed over that window, the 1m minimum dimension under Regulation 81(1) must be taken from furthest part of the outside of the roof structure (e.g. from the outside of the spouting).

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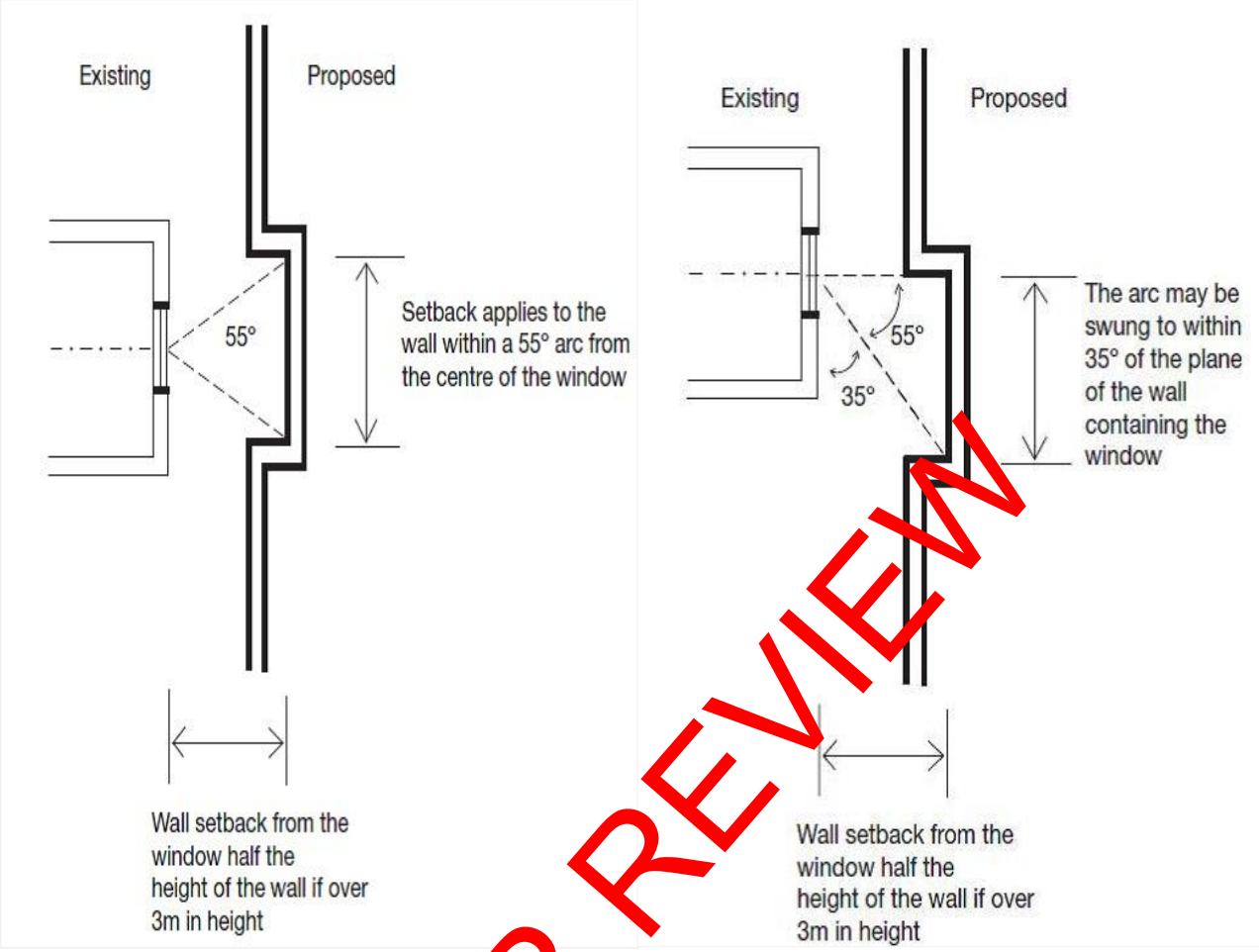


Figure 16 – Regulation 81(3) and (4)
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Solar access to existing north-facing habitable room windows

To protect the energy efficiency of an existing dwelling on adjoining allotments, regulation 82 (Solar access to existing north-facing habitable room windows) requires the proposed building to be set back from the boundary based on the building height at any point as shown in Figure 17.

The setback only applies for the part of the proposed building located directly opposite the north facing habitable room window for the width of the north facing habitable room window and for a distance of 3m from each side of the north-facing habitable room window that is within 3 m of the boundary as shown in Figure 18.

Regulation 82 only protects the habitable room window or part of the habitable room window of the existing dwelling on an adjoining allotment if the window:

(a) is within 3m of boundary
(b) is situated below the eaves or the top of a parapet of the proposed building; and
(c) is orientated towards the boundary. An existing window will be regarded as being orientated towards the boundary if the plane of the glazing is less than 90° from the line of the boundary; and
(d) is north-facing – defined in the regulations as a window orientated true north 20° west to true north 30° east (refer Figure 19)

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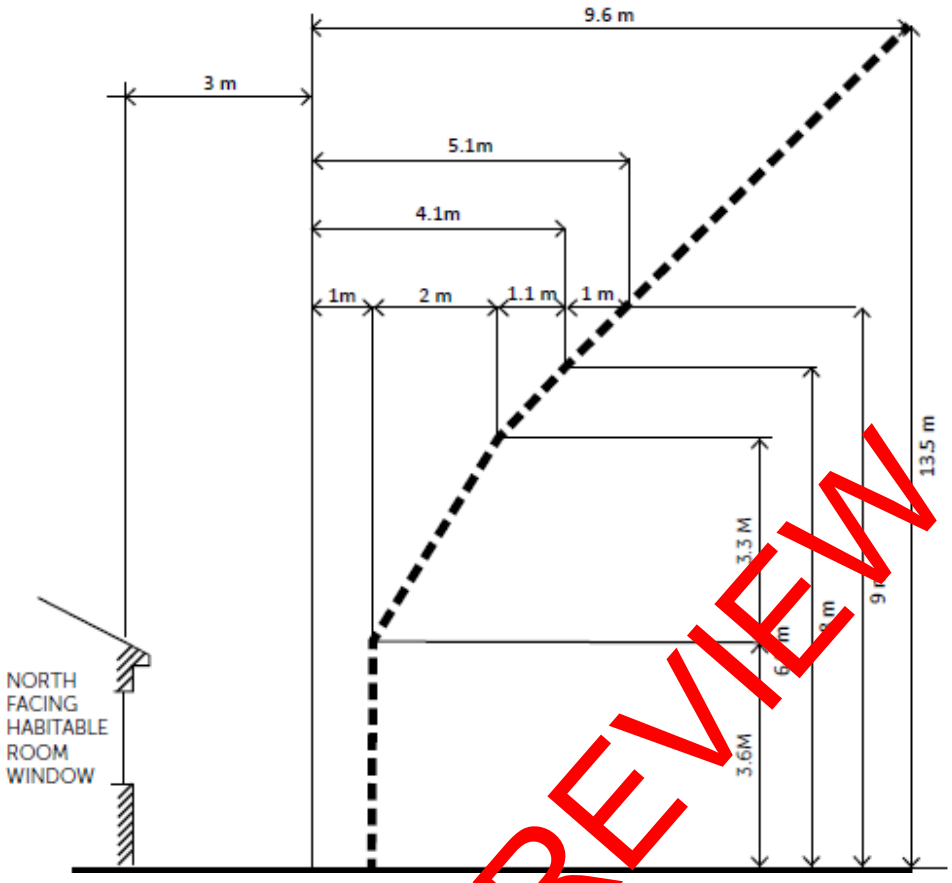


Figure 17 - Regulation 82 Table 82
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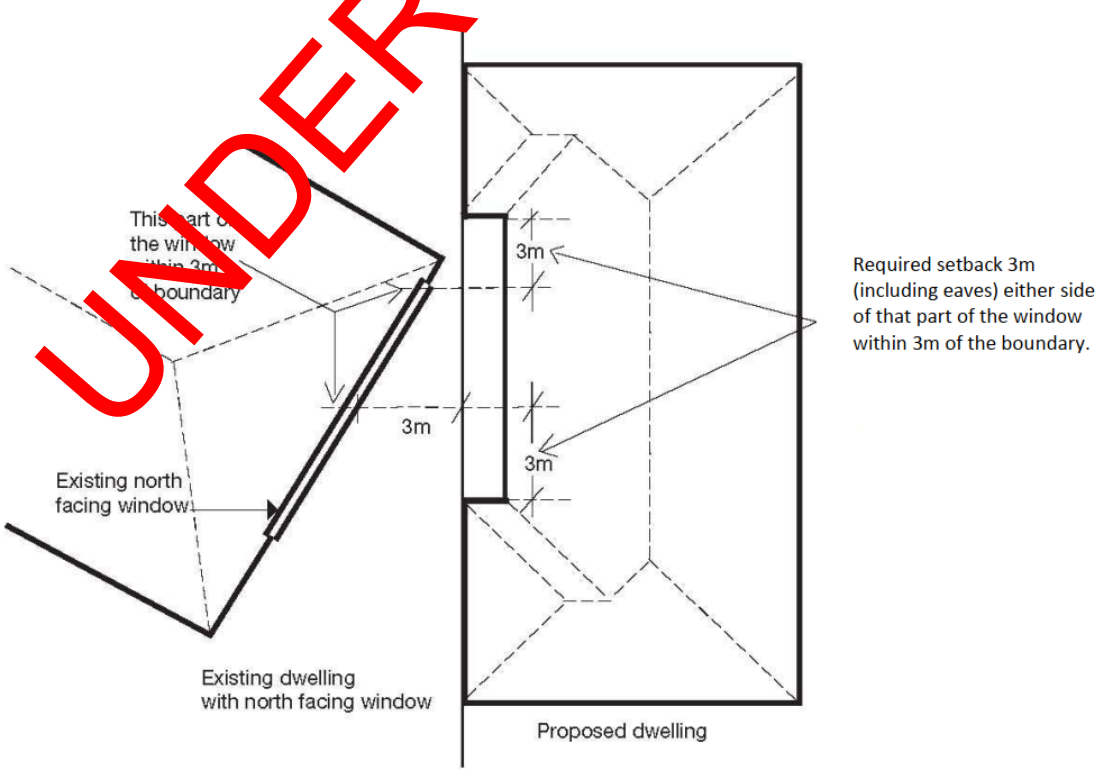


Figure 18 - Regulation 82(2) setback applies for 3m each side of the window
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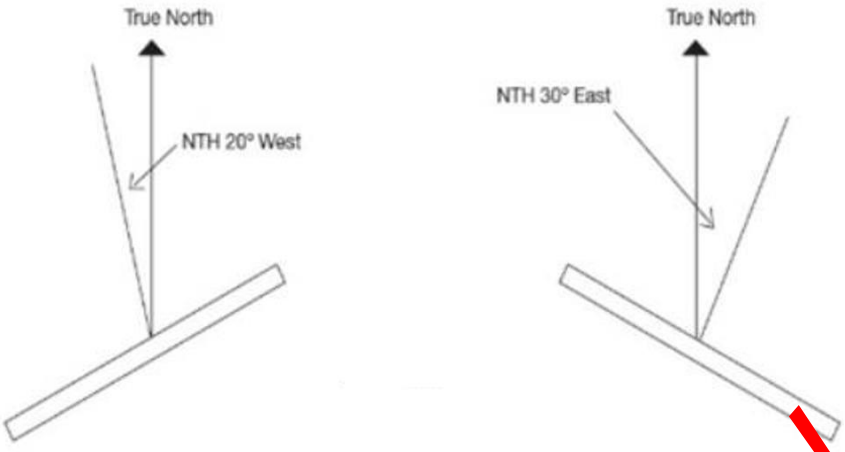


Figure 19 - Definition north facing window
Produced by VBA

Regulation 82 must still be complied with even when existing vegetation prevents solar access to the adjoining window. The existence of vegetation may be used to support an application for the report and consent of council.

It is now common that buildings are constructed without eaves or parapets. For such designs, the RBS is to consider that a wall that does not have eaves, to be the equivalent of a parapet. Similarly, the lower part of a roof that does not have a soffit such a verandah or carport roof is considered an eave. This is to ensure that regulation 82 applies as intended to maintain solar access to the existing north-facing window.

Figure 19 shows how to determine whether a window is a north facing window to which Regulation 82 applies.

Overshadowing of recreational private open space (RPOS)

A veranda, deck, terrace, patio, balcony, pergola, gazebo, swimming pool or spa are considered to be private open space (POS), forming recreational private open space (RPOS), therefore these structures should be completely **excluded** when undertaking an overshadowing assessment in line with reg 83.

The intention of Regulation 83 is to protect the available sunlight to an existing dwelling's recreational private open space (RPOS) on an adjoining allotment, regulation 83 requires that a building must maintain a required minimum area of sunlight for the RPOS on the adjoining allotment for 5 hours between 9am – 3pm on 22 September. **If the adjoining allotment has less than the required minimum area of sunlight, there can be no further overshadowing** (between the hours of 9am - 3pm on 22 September).

The 5 hours of sunlight can be any time between 9am – 3pm and does not have to be consecutive.

For example, the required minimum area of sunlight could be provided for 1 hour between 9am – 10am and the remaining 4 hours between 11am – 3pm. Reg 83(1) requires the RBS to assess the plans that show 9am to 3pm, however for compliance a minimum of 5 hours is required.

The required minimum area is defined in regulation 83(4) as the lesser of:

(a) 75% of the RPOS; and
(b) 40m^2 with a minimum dimension of 3m.

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Overshadowing Diagrams

If the existing dwelling on an adjoining allotment does not already have the required minimum area of sunlight for 5 hours between 9am – 3pm on 22 September, then it is not permissible to further reduce sunlight to the RPOS (between 9am-3pm) without a report and consent. An example of this situation is outlined in the following scenario A.

Scenario A

9am – 2pm (5-hour period):

- The proposed building does not further overshadow the RPOS of the adjoining allotment, and
- The adjoining allotment already has less than the required minimum area of sunlight due to existing buildings on the adjoining allotment.

2pm – 3pm:

- The proposed building will further overshadow the RPOS of the adjoining allotment.

Outcome: Report and consent required.

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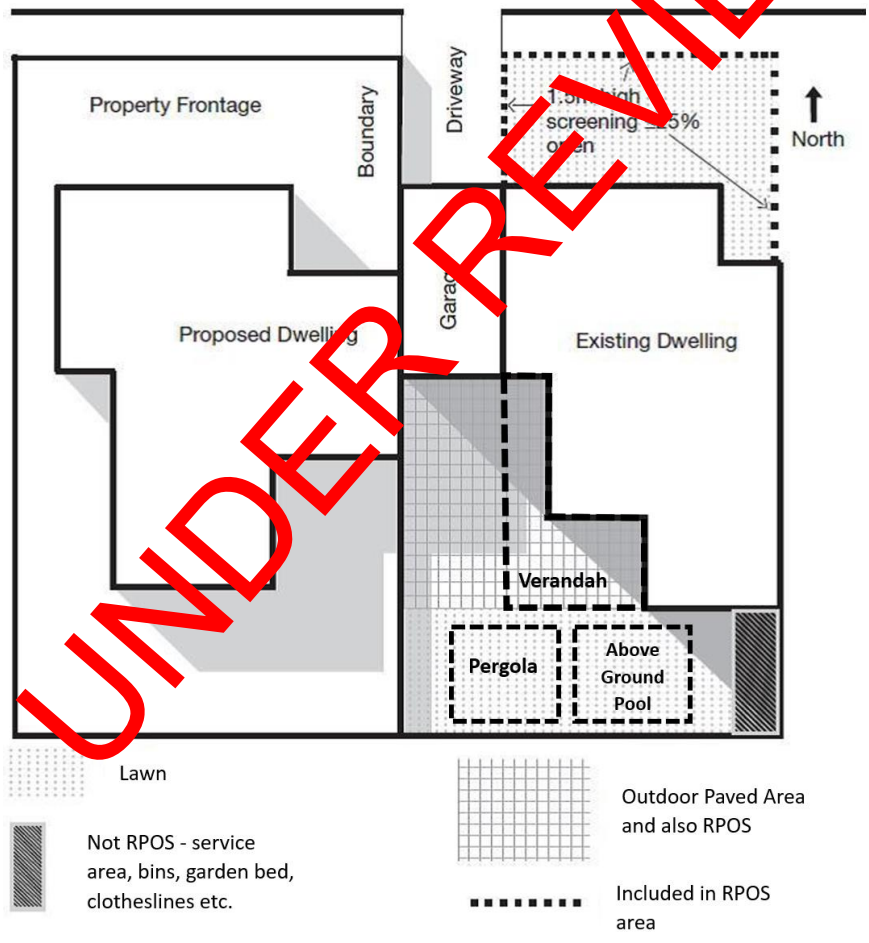


Figure 20 - Shows how to determine compliance to which Regulation 83 applies
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Overlooking

The purpose of regulation 84 (Overlooking) is to protect existing habitable room windows and secluded private open space (SPOS) on an adjoining allotment from overlooking.

The definition of **raised open space** and **secluded private open space** is provided in Regulation 84(10).

It is not the role of the RBS to identify the SPOS and the area that achieves compliance. It is the responsibility of the applicant to submit documents which demonstrate compliance to the satisfaction of the RBS. If appropriate information is not provided in the application, the RBS must request more information.

Regulation 84(2) and (3) describe a three-dimensional space or envelope into which a direct line of sight should not be provided. This direct line of sight is measured 9m horizontally from 1.7m above the floor of the habitable room or raised open space - refer to Figures 21 and 22.

Where a habitable room window in an adjoining allotment falls within the 9m arc shown in Figure 21, the window in the proposed building will be non-compliant or will be required to be screened or obscured in accordance with regulation 84(5).

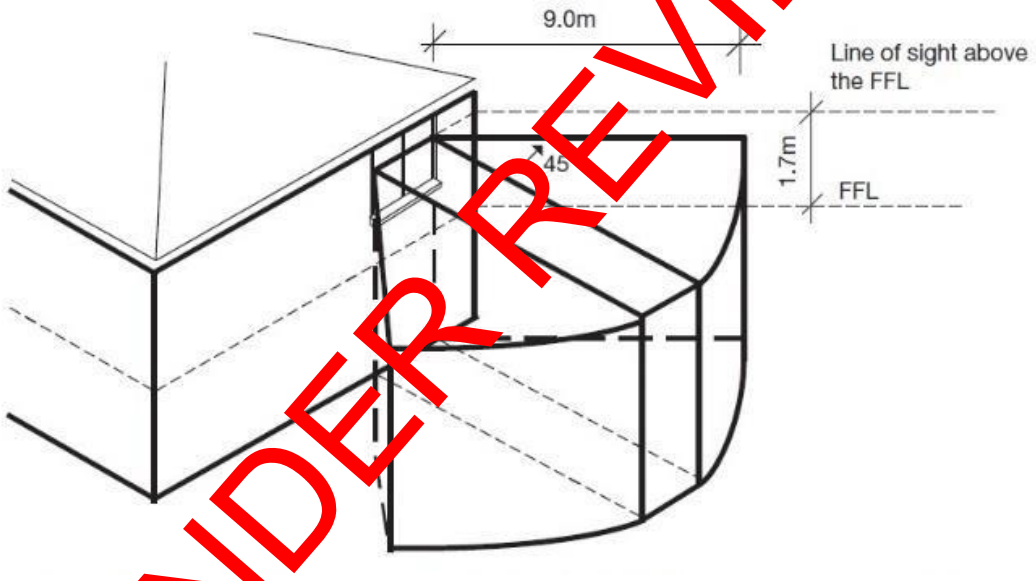


Figure 21 - Overlooking from a habitable room window
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Simple solutions to achieve compliance are set out in regulation 84(5) such as the use of permanent screening or obscure glazing.

Obscure glazing is not defined in the regulations. As guidance, there are many methods to achieving the objective of obscuring vision such as the manufacturing for the type of glass (e.g. frosted, fluted).

Designs that provide an alternative to the compliance mechanism provided by the regulation can be considered as a solution to restricting a direct line of sight. For example, a vertical wing screen may prevent a direct line of sight into a habitable room window. Similarly, the use of deep reveals or window ledges may prevent a direct line of sight into a SPOS or habitable room window of a lower storey on the adjoining allotment. Documentation should be provided to the RBS that clearly shows the proposed solution to prevent a direct line of sight.

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Overlooking into habitable room windows

A three-dimensional view of the space to be considered when assessing overlooking into habitable room windows on an adjoining allotment is shown in Figure 21. & 22.

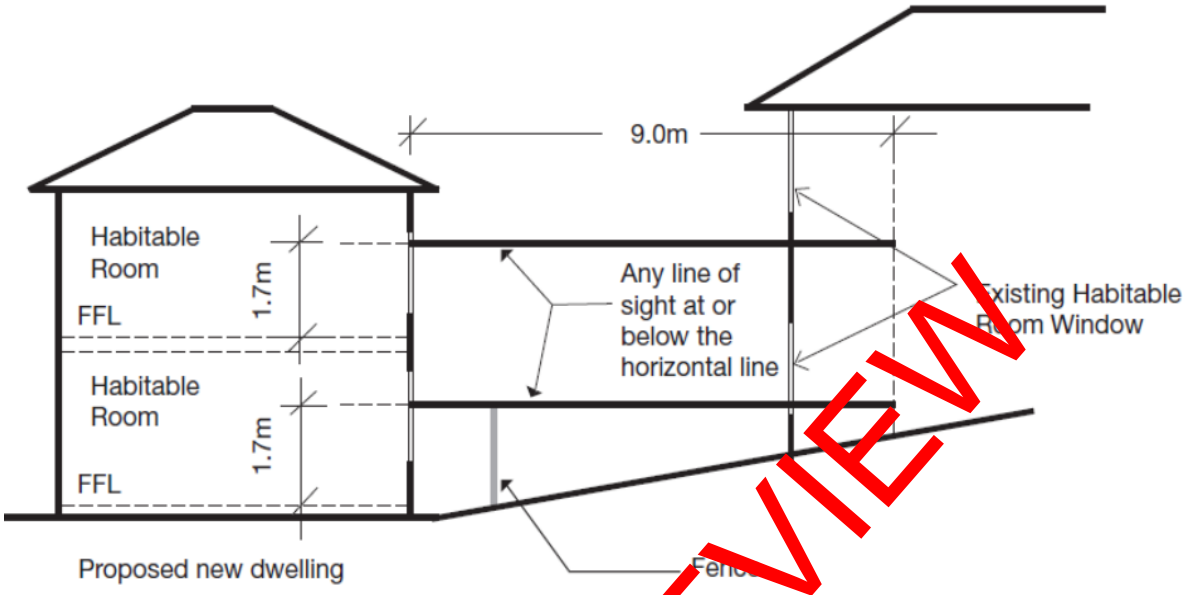


Figure 22 – Overlooking into habitable room windows
Produced by VBA

There is no overlooking from the lower storey window due to the height of the fence. There is also no overlooking from the upper storey window into the upper storey window of the adjoining dwelling. However, there is overlooking from the upper storey window of the proposed dwelling into the existing lower storey habitable room window on the adjoining allotment.

Sub-regulation (4) limits the direct line of sight onto a SPOS to an area at and below a line connecting the point 1.7m above the floor level of the room or raised open space to the point at ground level measured at a horizontal distance of 9m. (Refer to Figures 23- Overlooking of SPOS and 24 – Overlooking of SPOS - elevation).

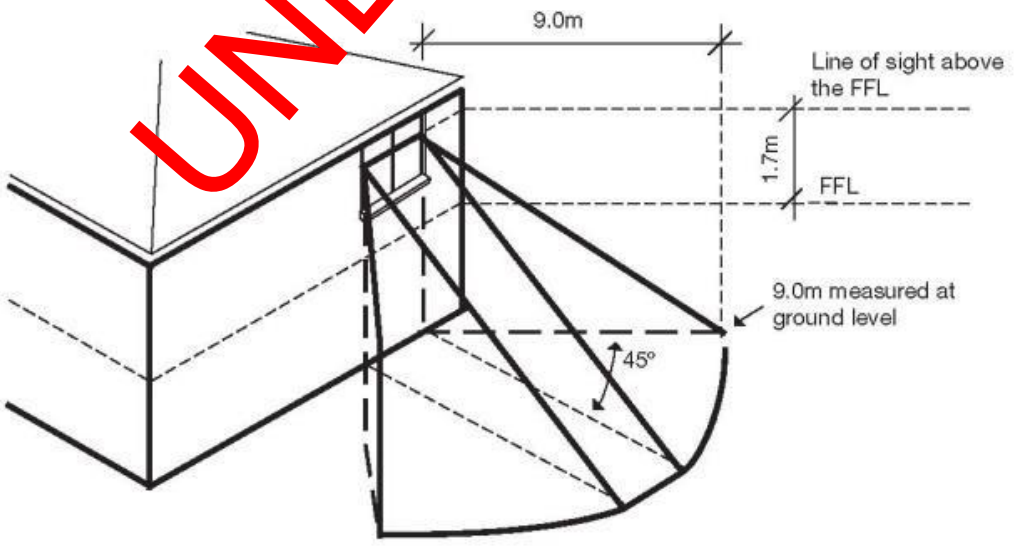


Figure 23 – Overlooking of secluded private open space
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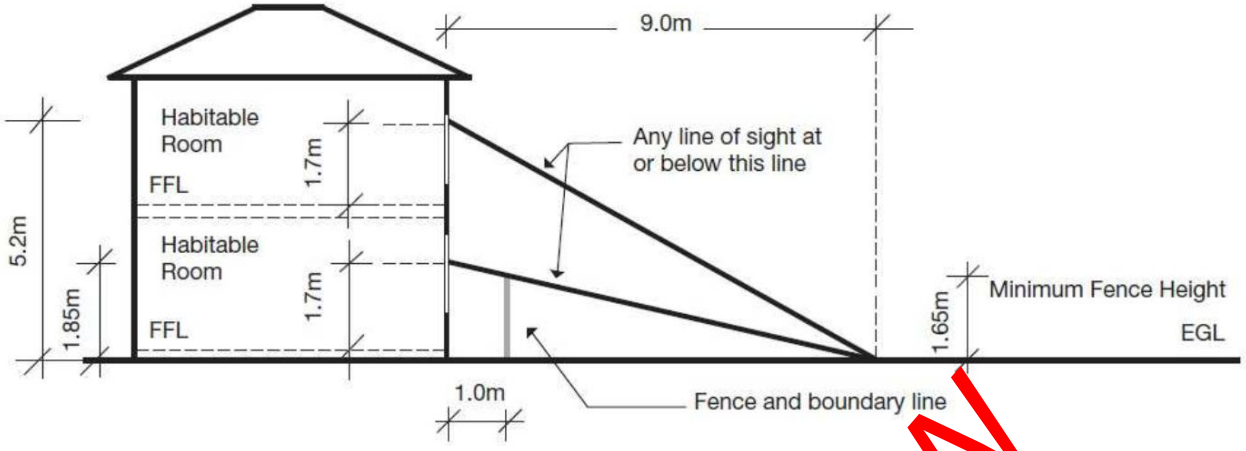
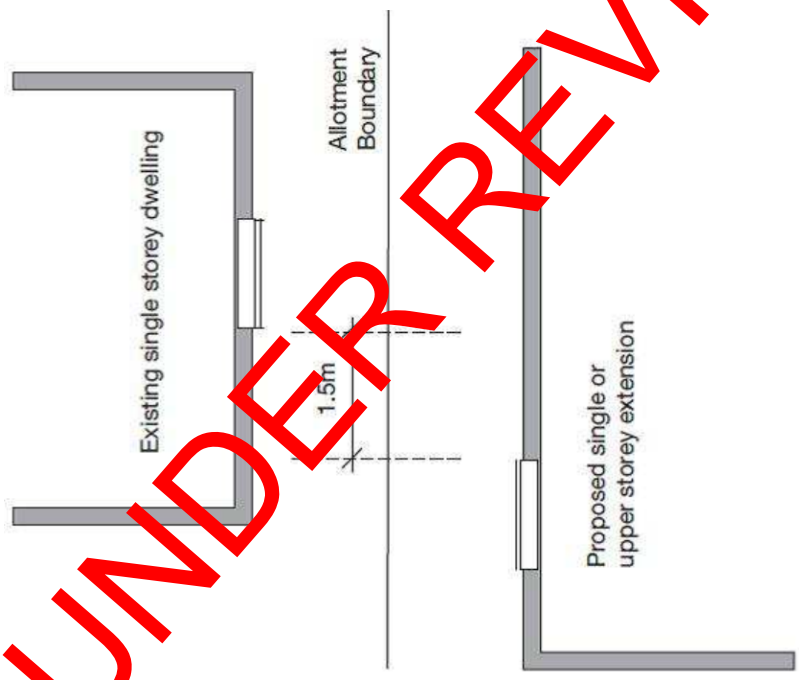


Figure 24 - Overlooking of secluded private open space – Elevation
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A habitable room window is regarded as complying with regulation 84 in various circumstances set out in regulation 84(5), one of which is illustrated in Figure 25.



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Figure 25 – Overlooking – Offset of 1.5m from edge of windows
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This regulation provides a type of deemed to satisfy provision. If a floor level and visual barrier are provided in accordance with regulation 84(8) then the remainder of regulation 84 does not apply and need not be assessed.

This does not mean that the applicant must have a 1.8m high visual barrier at the boundary if the floor level is less than 800mm above the ground level at the boundary.

There may well be instances where a barrier of less than 1.8m may prevent overlooking however this means that the two conditions of regulation 84(8) have not been met and the remainder of regulation 84 would apply and need to be assessed to determine compliance.

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Daylight to habitable room windows

The purpose of regulation 85 (Daylight to habitable room windows) is to ensure that all windows of the proposed building's habitable rooms receive adequate light by ensuring that the external side of the window is not blocked by buildings. Figure 26 illustrates the concessions, allowing a habitable room window to face a veranda, porch, deck balcony or carport if they are sufficiently open.

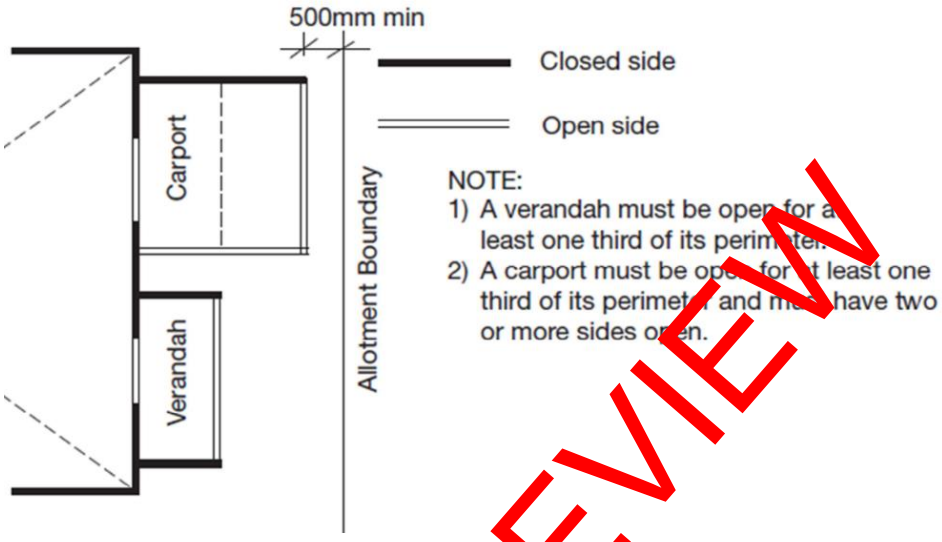


Figure 26 – Daylight to habitable room windows
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Private open space

Regulation 86 (Private open space) ensures that the Class 1 building, other than a small second dwelling, on the allotment has sufficient private open space as an outdoor amenity. The definition of private open space is defined in regulation 5 as an unroofed area of land or a deck, terrace, patio, balcony, pergola, veranda, gazebo, swimming pool or spa.

Regulation 86 requires a total minimum area of private open space of not less than 80 m^2 or 20% of the allotment (whichever is lesser). As part of that total, 25 m^2 of private open space must be at the side or rear of the building with convenient access from a habitable room (other than a bedroom) and a minimum dimension of 3 m. The minimum dimension of 3 m applies to all dimensions of the private open space provided at the side or rear.

Where a small second dwelling is proposed to be constructed on the allotment, the private open space required by regulation 86(2)(a) does not apply. Instead, regulation 86(2)(b) applies as generally a small second dwelling will be built on the private open space of the existing dwelling therefore reducing its private open space. Regulation 86(2)(b) allows a reduced private open space and only requires that the existing dwelling has a private open space not less than 25m^2 and a minimum dimension of 3m at the side or rear of the existing dwelling with convenient access from a habitable room (other than a bedroom).

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Siting of Class 10a buildings

Regulation 87 (Siting of Class 10a Buildings) stipulates that a Class 10a building that is appurtenant to a building of another class must be on the same allotment as the building of the other class unless it is approved under the Subdivision Act 1988 or any corresponding previous enactments.

Regulation 87 does not apply if a Class 10a building is not appurtenant to a building of another class. However, depending on the land zone and use of the Class 10a building, a planning permit may be required.

Regulation 87 also does not apply to a Class 10a building that is exempt by Schedule 3 of the Regulations. Refer to practice note BP-01 – When is a building permit required.

Fences

Regulation 89 (front fence height) stipulates maximum heights for a fence within 3m of the front street alignment. The heights allowed depend on the type of road or street.

Regulations 90, 91, 94, 95 and 96 apply similar equivalent regulations in Division 2 of Part 5.

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Related Documentation

- Building Act 1993
- Building Regulations 2018
- Practice note SI02 – Building envelopes
- Practice note SI03 – Small second dwellings

List of Amendments

- Updated template
- Improved some diagrams.
- Clarifications of various siting regulations

Document history

Sector	Building
Category	Siting
Topic	Siting of Class 1 single dwellings, Class 10a buildings and fences
Document number	47
Version	1.0
Superseded	• Part 5 of the Building Regulations 2018 – Siting | PN-47, published August 2019
Published	26 July 2024

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