

Building envelopes and Part 4 of the Building Regulations 2006

This updates the previous Practice Note 2011-02 issued May 2011.

1. PURPOSE

This Practice Note explains the exception concerning building envelopes in Part 4 of the Building Regulations 2006 (the Regulations).

2. BACKGROUND

Part 4 of the Regulations recognises an “approved building envelope”.

The recognition of an approved building envelope is part of a package that included an amendment to Clause 56 (the subdivision clause) of the Victoria Planning Provisions (the VPP). The amendment to Clause 56 may increase the use of building envelopes and broaden the scope of the matters they deal with. Where building envelopes are utilised in future subdivisions, they will be assessed against any relevant standards of the residential provision of Clause 54 of the VPP.

The Regulations provide that where an application for a building permit does not comply with a siting matter regulated by Part 4 of the Regulations, but does comply with an “approved building envelope” that deals with that same matter, the consent and report of the relevant council is not required for that matter subject to the application complying with all the

siting matters dealt with by the “approved building envelope”.

The Regulations also apply to some earlier building envelopes created prior to regulations 406 being made subject to their meeting the criteria of an “approved building envelope”.

3. WHAT IS AN APPROVED BUILDING ENVELOPE?

Under the Regulations, an “approved building envelope” means documented design parameters that deal with a siting matter regulated by Part 4 of the Regulations that—

- (a) are in a planning permit for subdivision issued under the Planning and Environment Act 1987 on or after 1 July 1994; and
- (b) are –
 - (i) in an agreement made under section 173 of them Planning and Environment Act 1987 which is registered on the title of the relevant allotment; or
 - (ii) shown as a restriction on a plan of subdivision certified under the Subdivision Act 1988 which is registered on the title of the relevant allotment.

All building envelopes must meet these criteria to be considered.

The design parameters may include a one or two-dimensional plan, text annotations or a combination of both.

Covenants that do not meet the requirements of an “approved building envelope” will not gain recognition under the Regulations.

4. EXISTING BUILDING ENVELOPES

The most basic form of earlier building envelope that might exist will be a simple two dimensional ‘footprint’ envelope shown on the allotment plan. This type of building envelope is usually limited to showing front, side and rear setbacks, and in some instances may also deal with the building height and walls on boundaries. More sophisticated forms of building envelopes might include a three-dimensional plan with or without text or annotations.

In some instances, it is possible that an earlier building envelope may deal with some of the amenity matters contained in Part 4 of the Regulations. In particular, it is possible that an earlier building envelope might deal with overlooking and/or overshadowing.

In relation to earlier “approved building envelopes”, it is anticipated that the most common departures from the Regulations are likely to involve front setbacks, building height and walls on boundaries.

In all instances, the relevant building surveyor (the RBS) must be satisfied that the matter is explicitly dealt with by the building envelope or any text annotations before determining that a consent and report is not required. Inferring that the building envelope deals with a siting matter is not appropriate.

5. ASSESSING A BUILDING PERMIT APPLICATION WHERE THERE IS AN “APPROVED BUILDING ENVELOPE”.

The new regulation 406(1) states:

“The consent and report of the relevant council is not required in relation to a design in respect of an allotment where the design does not comply with a regulation in this Part if—

- (a) an approved building envelope applies to the allotment and deals with a siting matter that is regulated by that regulation; and
- (b) the design of the building is consistent with all the siting matters dealt with by the approved building envelope that are regulated by this Part.”

It is the responsibility of the RBS to determine whether a consent and report is required or not required. It should be noted that pursuant to sub regulation (1)(b), the application must comply with all the siting matters dealt with by the approved building envelope.

Example:

A building permit application is received where the allotment is subject to an “approved building envelope” that deals with front, side and rear setbacks and building height.

The “approved building envelope” allows a minimum front setback of 4m, a maximum building height of 12m and the same side and rear setbacks as Part 4 of the Regulations. The application shows a front setback of 4m, a maximum building height of 11m and side and rear setbacks that comply with the Regulations and the “approved building envelope”.

An assessment of the application under Part 4 of the Regulations shows that the required front setback is 5.5m, which is the average setback

distance of the existing dwellings on the adjoining allotments.

Ordinarily, a consent and report would be required for the front setback of 4m. A check of the “approved building envelope” shows that a 4m setback is allowed and that the application complies with all other matters expressly addressed by the “approved building envelope”, that is, the building height and side and rear setbacks. Therefore a consent and report is not required in relation to the 4m front setback.

Similarly, Part 4 of the Regulations limits the building height to a maximum of 9m, as the allotment is level. The “approved building envelope” allows a maximum building height of 12m, and as it has been determined that the application complies with all other siting matters addressed by the “approved building envelope”, a consent and report is not required for the 11m building height.

6. ADJOINING ALLOTMENTS NOT PART OF THE SAME AGREEMENT.

Where an adjoining allotment is not part of the same section 173 agreement or shown on the same certified plan of subdivision, any siting matter dealt with by the “approved building envelope” that relates to the amenity of the adjoining allotment does not have effect as it relates to that adjoining allotment. The equivalent regulations under Part 4 apply instead.

They are regulations-

- 414 -Side and rear setbacks
- 415 -Walls on boundaries
- 416 -Daylight to existing room windows
- 417 -Solar access to existing north-facing habitable room windows
- 418 -Overshadowing of recreational private open space
- 419 -Overlooking

- 425 -Fence setbacks from side and rear boundaries
- 426 -Fences on or within 150mm of side or rear boundaries
- 428 -Fences and daylight to windows in existing dwellings.
- 429 -Fences and solar access to existing north-facing habitable room windows
- 430 -Fences and overshadowing of recreational private open space

This situation will typically apply to the outer edge lots of a subdivision and is designed to protect existing and future dwellings that are not a party to the same section 173 agreement or the same certified plan of subdivision.

7. WHAT IF THE APPLICATION COMPLIES WITH THE REGULATIONS BUT NOT THE APPROVED BUILDING ENVELOPE?

The owner of an allotment that is subject to an “approved building envelope”, like an owner of an allotment subject to any other form of covenant is required to comply with the “approved building envelope” in addition to complying with the Regulations. The owner may be subject to enforcement proceedings by a council or legal proceedings from other beneficiaries if they do not comply with the “approved building envelope”.

It is recommended that the RBS advise their client of this and provide them with every opportunity to reach compliance with the “approved building envelope”, or have the envelope amended through the appropriate mechanism prior to issuing a building permit.

8. SUMMARY

- Check the building permit application against Part 4 of the Regulations.

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- If it is determined that the application does not comply with a siting matter under Part 4, check whether a building envelope applies to the allotment and deals with the equivalent siting matter.
- Ensure the building envelope is an “approved building envelope” and meets the criteria of the definition including the requirement that the section 173 agreement or certified plan of subdivision is registered on the title of the allotment.
- If the building envelope does not meet the criteria of the definition, then the amendment to the Regulations does not apply.
- If it is an “approved building envelope”, ensure that the application complies with all the siting matters that the building envelope deals with prior to making a determination that a consent and report is not required.
- The matter as shown on the “approved building envelope” must be clear and explicit before the RBS determines that a consent and report is not required.
- Ensure that the relevant regulations apply where an adjoining allotment is not subject to the same section 173 agreement or is not shown on the same certified plan of subdivision.
- If applicable, ensure that the applicant understands their responsibility to comply with or amend the building envelope in addition to complying with the Regulations.

If you have a technical enquiry please email: technicalenquiry@vba.vic.gov.au or phone 1300 815 127

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The following table provides guidance in relation to a number of scenarios that may arise when assessing a building permit application where an approved building envelope applies.

| Proposal | Eligible for building permit? | Options |
|---|--|---|
| Meets all the specifications of the envelope but not some regulations on the same matters as the envelope. | Yes. A consent and report is not required in relation to those siting matters specified under the envelope that do not comply with a regulation. | <ul style="list-style-type: none"> ▶ Make the determination that a consent and report is not required where those matters dealt with by the envelope do not comply with the equivalent regulation. |
| Meets all the regulations but not some specifications of the envelope. Meets all the specifications of the envelope but not some regulations on matters not covered by the envelope. | Yes, but not conforming to the envelope may result in a breach of covenant or agreement. No. Must comply with all regulations not covered by the envelope. | <ul style="list-style-type: none"> ▶ Applicant is advised to redesign or ask council to amend envelope, to avoid breaching covenant or agreement. ▶ Redesign to the regulations not covered by the envelope but without affecting compliance with the envelope. ▶ Building surveyor or applicant can seek the consent and report of the council to depart from the regulations not met. |
| Does not meet the regulations on one matter, and meets the envelope on that matter but not on other matters. | No. It cannot be determined that a consent and report is not required as the application does not comply with all siting matters addressed by the envelope. | <ul style="list-style-type: none"> ▶ Redesign so the proposal meets all the envelope specifications. ▶ Applicant asks council to amend envelope on the other matters. ▶ Building surveyor or applicant seeks consent and report from council to depart from regulation on that matter (the owner is still required to comply with the envelope even if the council consents to that matter). |
| Meets all the regulations and meets the envelope except on one matter. | Yes, but not conforming to the envelope may result in a breach of covenant or agreement. | <ul style="list-style-type: none"> ▶ Redesign so proposal meets all envelope specifications. ▶ Applicant asks council to amend envelope on that matter. |