

*This updates the previous Practice Note-2014-02 issued May 2014*

## Summary

This Practice Note explains the application of regulation 71 concerning 'approved building envelopes' in Part 5 of the *Building Regulations 2018* (the Regulations).

## Background

Part 5 of the Regulations recognises an 'approved building envelope'.

Regulation 71 provides that where a design does not comply with a regulation in Part 5 of the Regulations, it is taken to comply if—

- an approved envelope applies to the allotment; and
- the approved building envelope deals with the same siting matter as the regulation; and
- the design of the building is consistent with the approved building envelope in relation to that siting matter.

Reference to an 'approved building envelope' in regulation 71 includes an 'approved building envelope' created before regulation 71 came into operation.

## What is an approved building envelope?

Under the Regulations, an 'approved building envelope' means documented design parameters that deal with a siting matter regulated under Part 5 of the Regulations that—

- are in a planning permit for the subdivision of land granted under the *Planning and Environment Act 1987* on or after 1 July 1994; and

- are—
  - specified in an agreement made under section 173 of the *Planning and Environment Act 1987* that is recorded on the Register under the *Transfer of Land Act 1958* in relation to the relevant allotment; or
  - shown as restrictions on the plan of subdivision of land certified under the *Subdivision Act 1988* that is recorded on the Register under the *Transfer of Land Act 1958* in relation to the relevant allotment.

A building envelope must meet these criteria to be recognised as an 'approved building envelope'.

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

Covenants that do not meet these criteria are not recognised as an 'approved building envelope' under Part 5 of the Regulations.

## 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 5 of the Regulations, for example overlooking or overshadowing.

In relation to earlier ‘approved building envelopes’, the most common departures from the Regulations are likely to involve front setbacks, building height and walls on allotment boundaries.

### Assessing a building permit application where there is an approved building envelope

When assessing a building permit, it is the responsibility of the relevant building surveyor (the RBS) to determine whether a building design that does not comply with a regulation in Part 5 of the Regulations, complies with an applicable ‘approved building envelope’.

The RBS must be satisfied that the matter, in relation to a particular regulation in Part 5, is explicitly dealt with by the ‘approved building envelope’ before deciding that a design may be taken to comply based on consistency with an ‘approved building envelope’. Inferring that the ‘approved building envelope’ deals with a siting matter is not appropriate.

**An 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 as show in the following table.

	<i>Approved building envelope</i>	<i>Part 5 of the Regulations</i>	<i>Building Permit application</i>
Min. front setback	4m	5.5m	4m
Min. side and rear setbacks	As per Part 5	1m	As per Part 5
Max. Building height	12m	9m	11m

An assessment of the application under Part 5 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 report and consent would be required under regulation 74, for the front setback of 4m but as a 4m front setback is consistent with the ‘approved building envelope’, the design is taken to comply with the minimum front street setback requirement of regulation 74. Therefore, a report and consent is not required in relation to the 4m front setback.

The side and rear setbacks are consistent with the ‘approved building envelope’ which references the requirements under Part 5 of the Regulations, therefore the design complies with the side and rear setback requirements.

Part 5 of the Regulations limits the building height to a maximum of 9m under Regulation 75, as the allotment is level. The ‘approved building envelope’ allows a maximum building height of 12m, and as the maximum design height of 11m is consistent with the ‘approved building envelope’, the design is taken to comply with the building height requirement of regulation 75. Therefore, a report and consent is not required for the 11m building height.

Other example scenarios for building permit applications are referred to in Appendix 1.

### **Adjoining allotments not part of the same agreement**

Where an adjoining allotment is not part of the same section 173 agreement (under the *Planning and Environment Act 1987*), or is not 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, under regulations 79 to 84, 90, 91, and 94 to 96, does not apply to the extent that it relates to that adjoining allotment. Those regulations apply instead.

This situation will typically apply to perimeter allotments 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.

### **What if the application complies with the Regulations but not the approved building envelope?**

The owner of an allotment 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', similarly to an owner of an allotment who is a party to any other form of covenant.

It is recommended that the RBS advise their client of the non-compliance with the building envelope and recommend a re-design to comply with the envelope or apply to council to amend or vary the envelope. An RBS cannot issue a building permit if there is non-compliance with the approved building envelope.

## **Further information**

### **Want to know more?**

If you have a technical enquiry, please email [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or call 1300 815 127.

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## Appendix 1 – Building envelope proposals

The table below explores various scenarios where a design either meets or does not comply with a regulation in Part 5 and whether a building permit may be issued. Under each scenario, each row considers the same matter, the left-hand column dealing with that matter in terms of compliance with a matter specified in an ‘approved building envelope’ and the right-hand column dealing with the same matter in terms of compliance with a regulation in Part 5, respectively. A green cell means it meets the requirement, red means it does not meet the requirement.

Scenario 1		Scenario 2		Scenario 3		Scenario 4	
Spec (a)	Reg (a)	Spec (a)	Reg (a)	Spec (a)	Reg (a)	Spec (a)	Reg (a)
Spec (b)	Reg (b)	Spec (b)	Reg (b)	Spec (b)	Reg (b)	Spec (b)	Reg (b)
Spec (c)	Reg (c)	Spec (c)	Reg (c)	Spec (c)	Reg (c)	Spec (c)	Reg (c)
Spec (d)	Reg (d)	Spec (d)	Reg (d)	Spec (d)	Reg (d)	Spec (d)	Reg (d)
Spec (e)	Reg (e)		Reg (e)	Spec (e)	Reg (e)	Spec (e)	Reg (e)
<p><b>Yes,</b> Eligible for building permit.</p>		<p><b>No,</b> Not eligible for a Building permit. Must comply with all regulations not covered by the envelope.</p>		<p><b>No,</b> Not eligible for a Building permit. Not conforming to the envelope</p>		<p><b>No,</b> Not eligible for a Building permit. Not conforming to the envelope.</p>	
<ul style="list-style-type: none"> <li>A report and consent is not required in relation to those siting matters specified under the envelope that do not comply with a regulation.</li> </ul>		<ul style="list-style-type: none"> <li>Applicant should be advised to redesign to the regulations not covered by the envelope without affecting compliance with the envelope; or</li> <li>Applicant can seek the report and consent of the council to depart from the regulations not met, if applicable.</li> </ul>		<ul style="list-style-type: none"> <li>Applicant should be advised to redesign so the proposal meets all envelope specifications.</li> <li>Applicant may ask council to amend, or allow a variation to, the envelope.</li> </ul>		<ul style="list-style-type: none"> <li>Applicant should be advised to redesign so the proposal meets all envelope specifications.</li> <li>Applicant may ask council to amend, or allow a variation to, the envelope.</li> </ul>	