

Practice Note

2006-47

Issued June 2006

Part 4 of the Building Regulations 2006

This updates previous Practice Note 2005-47 issued June 2005.

PURPOSE

The purpose of this Practice Note is to provide clarification of Part 4 of the Building Regulations 2006 (the Regulations) This Practice Note is not intended as a substitute for making direct reference to the relevant regulations.

BACKGROUND

Division 2 and regulation 424 of Part 4 of the Regulations replicate standards introduced into the Victoria Planning Provisions (the VPP) and all Victorian Planning Schemes through clause 54. Clause 54 is the equivalent of Part 4 of the Regulations in that the clause, in certain circumstances, applies to the development of a single dwelling on an allotment when a planning permit is required. (See regulation 401 and 403 for further information).

PRELIMINARY

The Regulations provide for siting matters that have traditionally been dealt with under the planning approvals system. Building designers must provide sufficient information on plans to enable the relevant building surveyor (RBS) to determine compliance with the Regulations. The RBS should ensure that an application for a building permit provides sufficient information to determine that the application complies with the Regulations.

REQUIREMENT FOR INFORMATION

Regulation 302(2) includes requirements for:

(f) – Information regarding impermeable surfaces

(g) – location and dimension of car parking spaces; and

(h) – location, dimension and area of private open space.

Regulation 302(2)(c)(iii) provides for required information regarding secluded private open space and recreational private open space on an adjoining allotment to be provided in relation to the application.

This information is required to be submitted in relation to an application for a building permit if applicable.

SCHEDULE 5 OF THE REGULATIONS –PLANNING SCHEMES.

A number of regulations of Part 4 provide for recognition of siting controls introduced by a council under a schedule to a zone in a planning scheme.

The effect of Part 4 and Schedule 5 is slightly different from the operation of section 11 of the Building Act 1993 (the Act) in that the control as documented in the schedule to the zone becomes the regulation in that zone in that municipality, rather than the building regulation ceasing to have effect.

The regulations that can be amended by a schedule to a residential zone are—
Regulation 409 – Minimum street setbacks
Regulation 410 – Building height

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Regulation 411 – Site coverage

Regulation 414 – Side and rear setbacks

Regulation 421 – Private open space

Regulation 424 – Front fence height

It is likely that there will be a lag between the time that a schedule to a zone is adopted by a planning scheme and the time that Schedule 5 of the Regulations is amended to adopt the schedule to a zone.

PART 4 OF THE REGULATIONS

This Practice Note contains a number of drawings to assist in the clarification of the Regulations. Notations have been used in the drawings and those notations mean:

NGL = Natural ground level (regulations 402 & 410) EGL = Existing ground level (regulation 419)

FFL = Finished floor level (regulation 418)

RPOS = Recreational private open space

(regulation 418) SPOS = Secluded private open space (regulation 419)

DIVISION 1 - INTRODUCTORY MATTERS

REGULATION 402 – DEFINITIONS

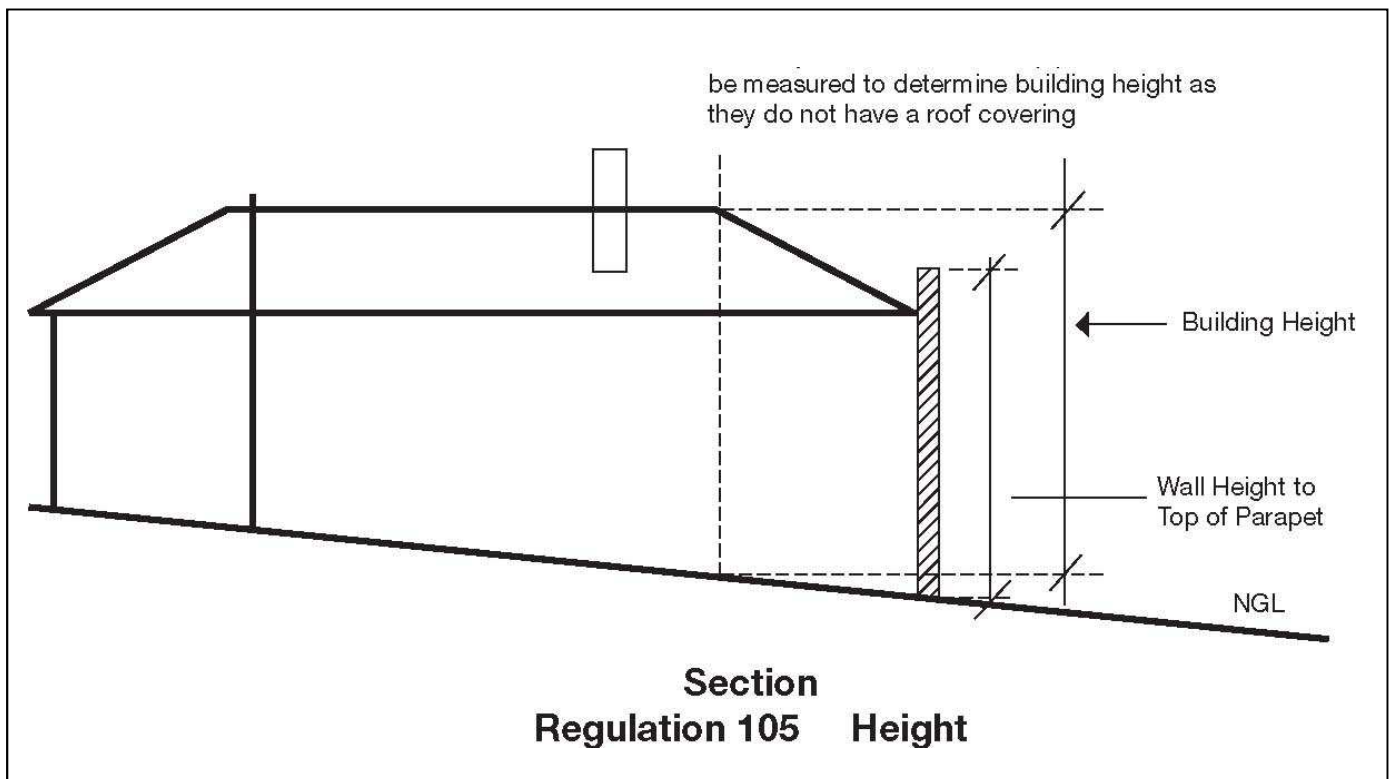
The definitions in this regulation apply to all of Part 4. Other definitions are contained in regulation 105. Further clarification is provided for the following definitions.

“Clear to sky”

Gutters or spouting should not be regarded as being clear to sky.

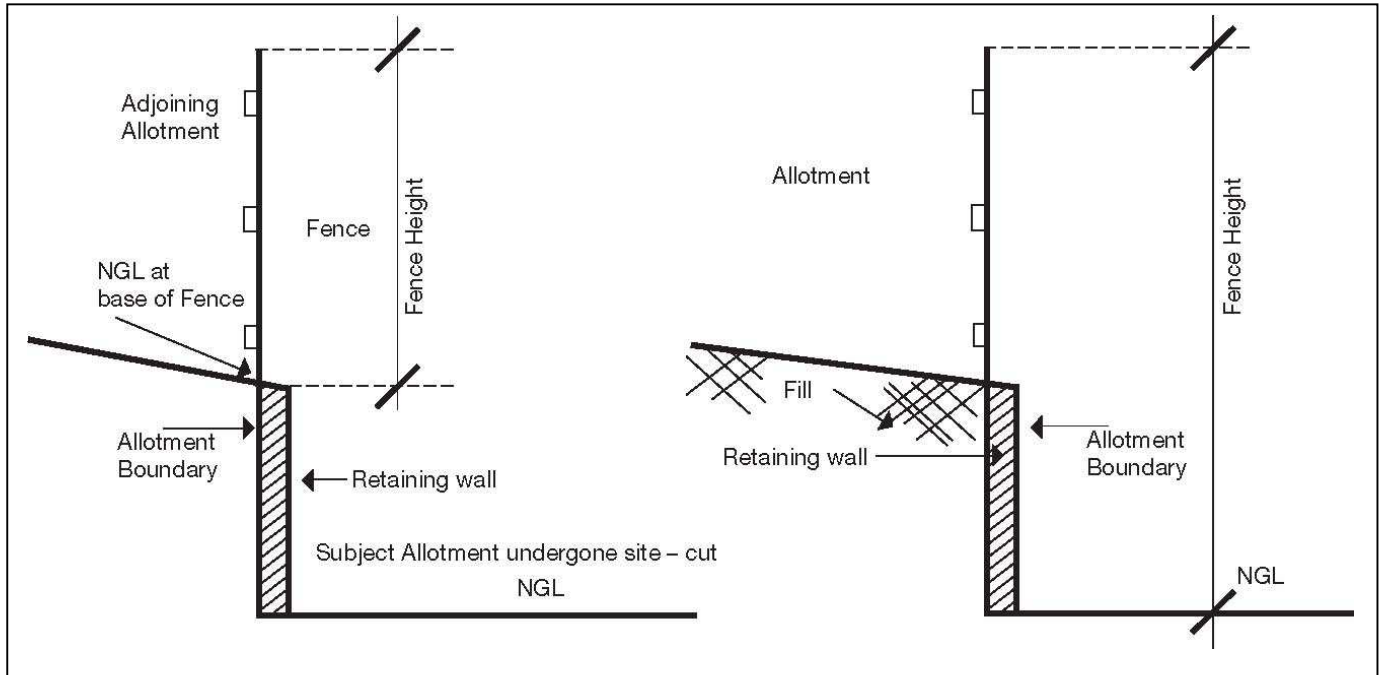
“Height”

Heights are measured vertically from natural ground level at the base of a wall or fence or, in the case of a building, vertically below the top of the roof covering. Chimneys, flues and service pipes are not included when measuring heights.



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The drawings below show the measurement of fence heights from natural ground level.

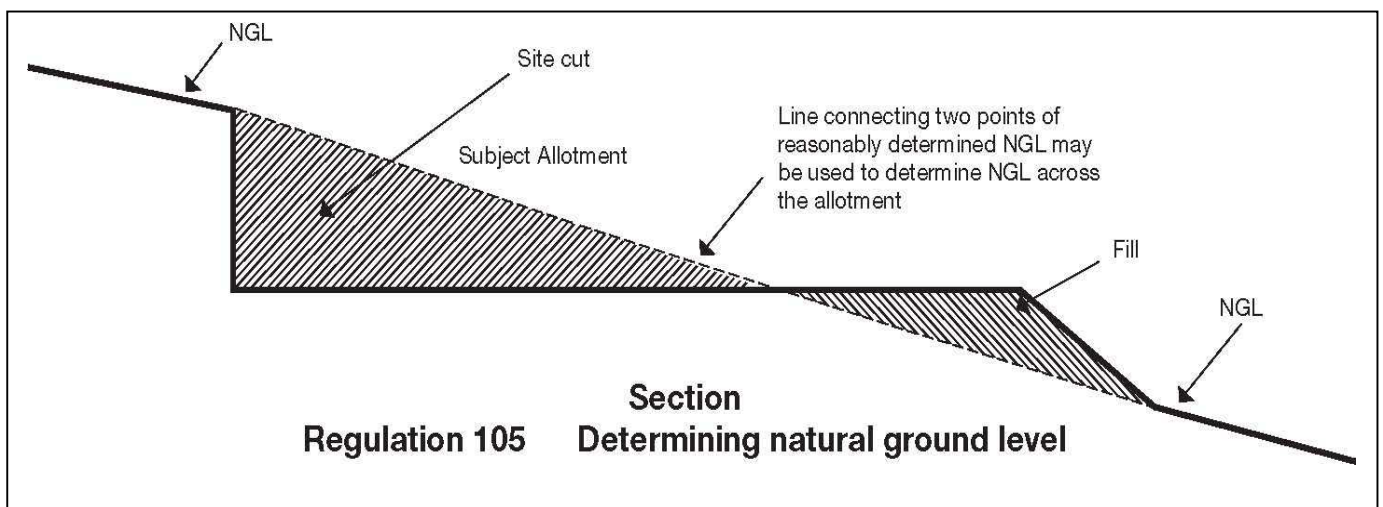


Section

Regulation 105 Height

Natural ground level can be difficult to ascertain when the subject allotment has undergone a cut and fill or other earthworks. For the purposes of the definitions in such situations, natural ground level may be taken as being indicated by 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.

The drawing below demonstrates an allotment that has undergone a site cut and fill and the method that may be used to determine natural ground level.



Similarly, where a new sub-division has been subject to extensive 'reshaping' earthworks, the new levels created by the reshaping can be taken as the natural ground level where the adjoining allotments have also been subject to the same earthworks or are at the same level.

"Private open space"

This definition of 'Private Open Space' relates to regulations 418, 419 and 421. Regulations 418 and 419 provide additional definitions relevant to each regulation respectively.

REGULATION 401 – APPLICATION OF PART 4

Regulation 401(1)

Part 4 is subject to section 11 the Act. This means that if a planning scheme contains a provision or provisions that regulate the siting of buildings and the provision or provisions are inconsistent with the Regulations and the inconsistency cannot be resolved then the regulation ceases to have effect.

The council must publish a notice in a newspaper to the effect that a regulation has ceased to have effect in that municipal district or part of it.

Regulation 401(2)

This regulation addresses the situation where a planning permit is required for the construction of a single dwelling and the relevant planning scheme regulates the same siting matter as a regulation.

This will apply where a planning permit has been issued and all or parts of clause 54 of the planning scheme have been assessed, or any other provision of the relevant planning scheme that regulates the 'same matter' as Part 4 of the Regulations. There is no need to assess the equivalent regulations under Part 4. There are several scenarios where this will have effect.

Scenario 1

A planning permit is required and has been issued due to the effect of a neighbourhood character overlay or where the planning permit requirement is triggered by a lot size of 300m² (or 500m² in some municipalities).

The VPP require that the standards of clause 54 are assessed under the application for the planning permit. Clause 54 contains standards that are equivalent to Division 2 and regulation 424 of Part 4.

If a planning permit has been issued due to the overlay or lot size trigger noted above, there is no need to assess these regulations under the building permit application. This is only applicable to planning permits where the application was lodged on or after 24 August 2001. The remainder of Part 4 is still required to be assessed for compliance.

Scenario 2

A planning permit may be required when full compliance with siting controls contained in the planning scheme is not achieved.

Some planning schemes contain provisions that provide for default 'no permit required' subject to compliance with the siting controls set out in the scheme. Often, these controls are set out in a Design and Development Overlay (DDO) or a schedule to that overlay and may provide siting controls for the same matter as a regulation. The overlay and schedule are part of the planning scheme.

In this instance, advice should be sought from the relevant council as to which standards have been assessed under the planning permit. Alternatively, the planning scheme can be accessed on line.

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Scenario 3

A planning permit is issued due to the effect of an overlay not mentioned in scenarios one or two. For instance, if a planning permit has been issued due to the effect of a wildfire management, vegetation or flood overlay, it is unlikely any of the standards of clause 54 or other siting provision of the planning scheme that would be regarded as the 'same matter' will have been assessed for the purposes of the planning permit. Advice should be sought from the relevant council.

It should be noted that all the above scenarios rely on the siting control or controls to be applied, adopted or incorporated documents in the planning scheme.

Where a planning permit has been obtained, and the relevant planning scheme regulates the 'same matter' as a regulation in Part 4 of the Regulations care must be taken to assess other regulations in Part 4 that are not equivalent to the relevant provision of the planning scheme. For instance, a planning permit may appear to have approved a 1.5m high front fence on a corner allotment. The fence is still subject to compliance with regulation 427 which requires a maximum height of 1.0m within 9m of a point of intersection of street alignments. A consent and report from the relevant council would be required for the higher fence.

Regulation 401(3) – section 188A applies

This regulation is self-explanatory.

Regulation 403 – reference to a planning scheme

This regulation is self-explanatory.

Regulation 404 – what is an existing building?

The clarification of this regulation is best expressed through an explanation of those instances when a building does not exist for the purpose of Part 4.

They are—

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. The sub regulation does not recognise a building as existing if, for instance, a stage building permit has been issued to frame stage and a certificate of final inspection has been issued for that stage.

The building requires a further certificate of final inspection before it can be occupied. When 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 will determine its own procedure as to when an occupancy permit has been 'given' to the council.

Regulation 405 – definition of a single dwelling

This regulation is self-explanatory.

DIVISION 2 - SINGLE CLASS 1 BUILDINGS AND ASSOCIATED CLASS 10 BUILDINGS

Regulation 407 – application of division 2

This regulation applies to Class 1 buildings and associated Class 10a buildings. In-ground swimming pools are therefore not regulated under this division.

Regulation 408 – maximum street setback

The reference in this regulation to .40469 ha is the equivalent of 1 acre or 4046.9m².

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

The geometry of some allotments, (i.e. axe-handle or hammerhead allotments) may mean a consent and report is required for the siting of

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the building.

Regulation 409 – minimum street setbacks

The purpose of this regulation is to respect a street's character and make efficient use of the site by relating setbacks to the context of setbacks on adjoining properties.

Regulation 409(1)

See section on Schedule 5 above.

Regulation 409(2) Table 409

Front and side street setbacks relate to the context of the adjoining allotment. The regulation applies to alterations and additions in addition to the construction of a new building.

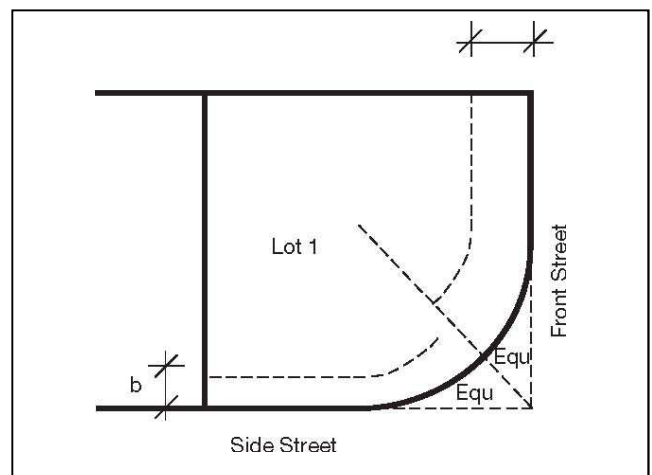
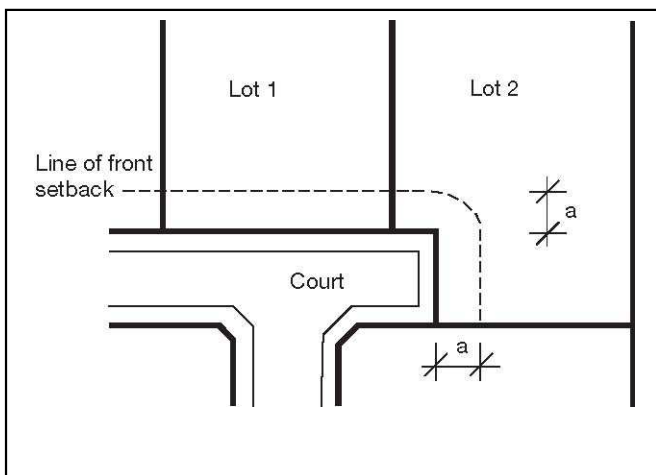
The term 'facing' means oriented towards that street, that is, the plane of the wall is less than

90o 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.

The term '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 for rear streets however regulation 414, Side and Rear Setbacks will apply.

The following diagrams illustrate methods of measuring front and side street setbacks in some situations.



PLAN VIEW

REGULATION 409 MINIMUM STREET SETBACKS

- a. line of minimum front street setback
- b. line of minimum side street setback

Column two of Table 409 refers to 'front walls of existing buildings' on adjoining allotments being used to determine the average distance of a minimum setback. Carports are open structures and do not have a 'front wall'. Carports are not to be used to determine the average distance of

a setback for the proposed building whilst garages may be.

Regulation 409(3)(a)

This regulation allows encroachments of porch and verandas of a height of less than 3.6m to encroach 2.5m into the required setback. Any associated steps, ramps or landings that form part of the porch or veranda must also be within the 2.5m encroachment distance allowed.

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Regulation 409(5)

Declared roads are usually main arterial roads. Information regarding roads 'declared' within the meaning of the Transport Act 1983 can be obtained from the relevant council or VicRoads. Declared roads are generally maintained by VicRoads, whilst a non declared road or 'any other street' is usually maintained by the relevant council. The VicRoads country roadmap identifies declared roads in rural areas.

Regulation 409(6)

This regulation is self-explanatory.

Regulation 410 – building height

The purpose of this regulation is to protect the amenity of adjoining allotments and the street character from excessively bulky and high buildings.

Regulation 410(1)

See section on Schedule 5 above.

Regulation 410(2)

Sub-regulation (2)(a) allows a maximum building height of 10m where the slope of the ground is 2.5% or more across an 8m section of the building site.

This is equal to a ratio of 1:23 or, expressed as a rise or fall over the 8m section is equal to 350mm. The drawing below illustrates aspects of regulation 410(2)

Elevation Regulation 410(2) Building height

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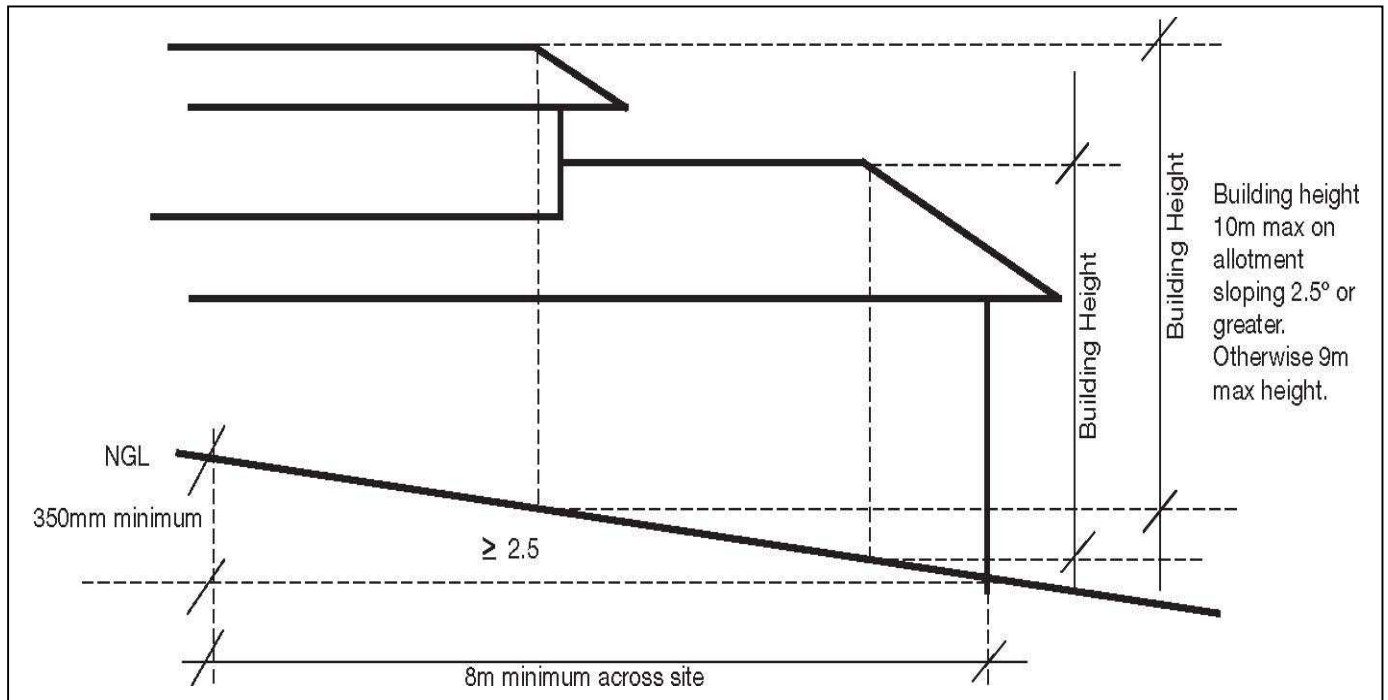
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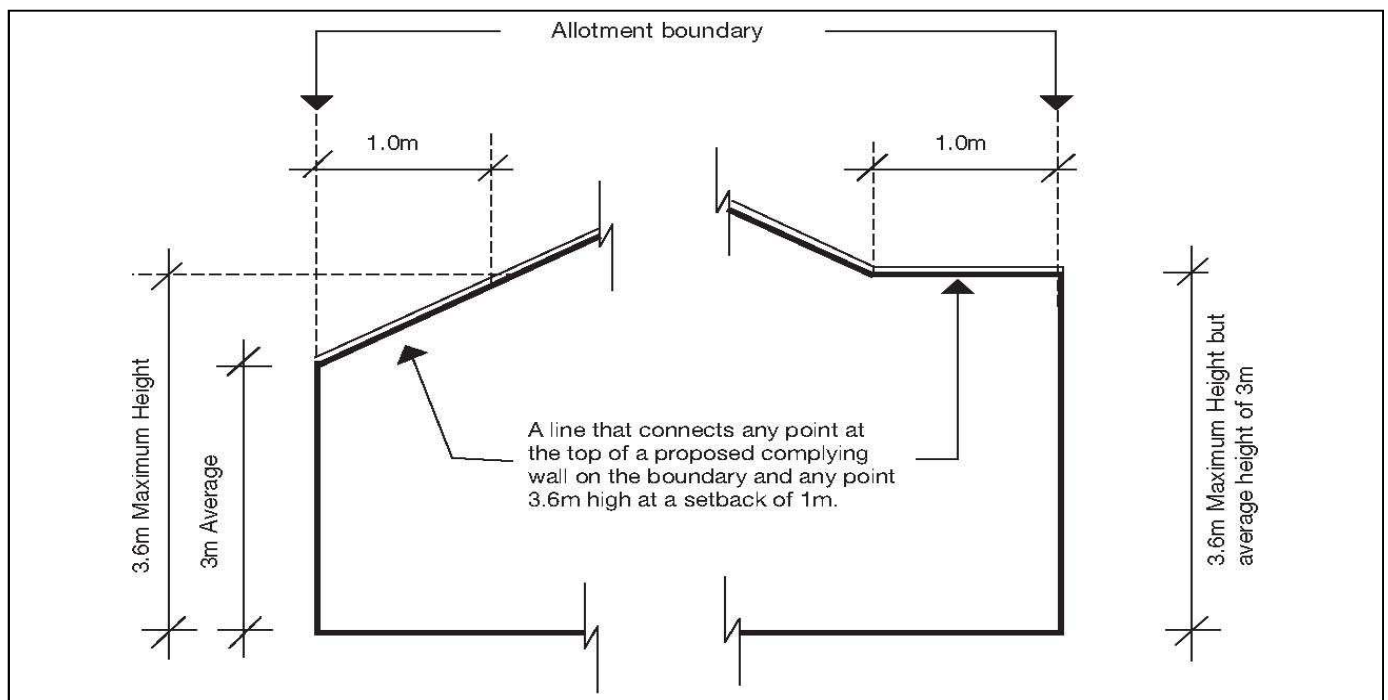
Elevation

Regulation 410(2) Building height

Regulation 410(3)

The purpose of this regulation is to provide a building envelope or height control for that part

of a building that is within 1m of a boundary and adjacent to a wall on the subject boundary. The following diagram illustrates the operation of the regulation. No matter what the height of the proposed wall on the boundary a right to achieve a building height of 3.6m at a 1m setback applies.



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SECTION REGULATION 410(3) BUILDING HEIGHT

Regulation 411 – site coverage

The purpose of this regulation is to provide adequate outdoor space on an allotment for the amenity of the owners.

Regulation 411(1)

See section on Schedule 5 above.

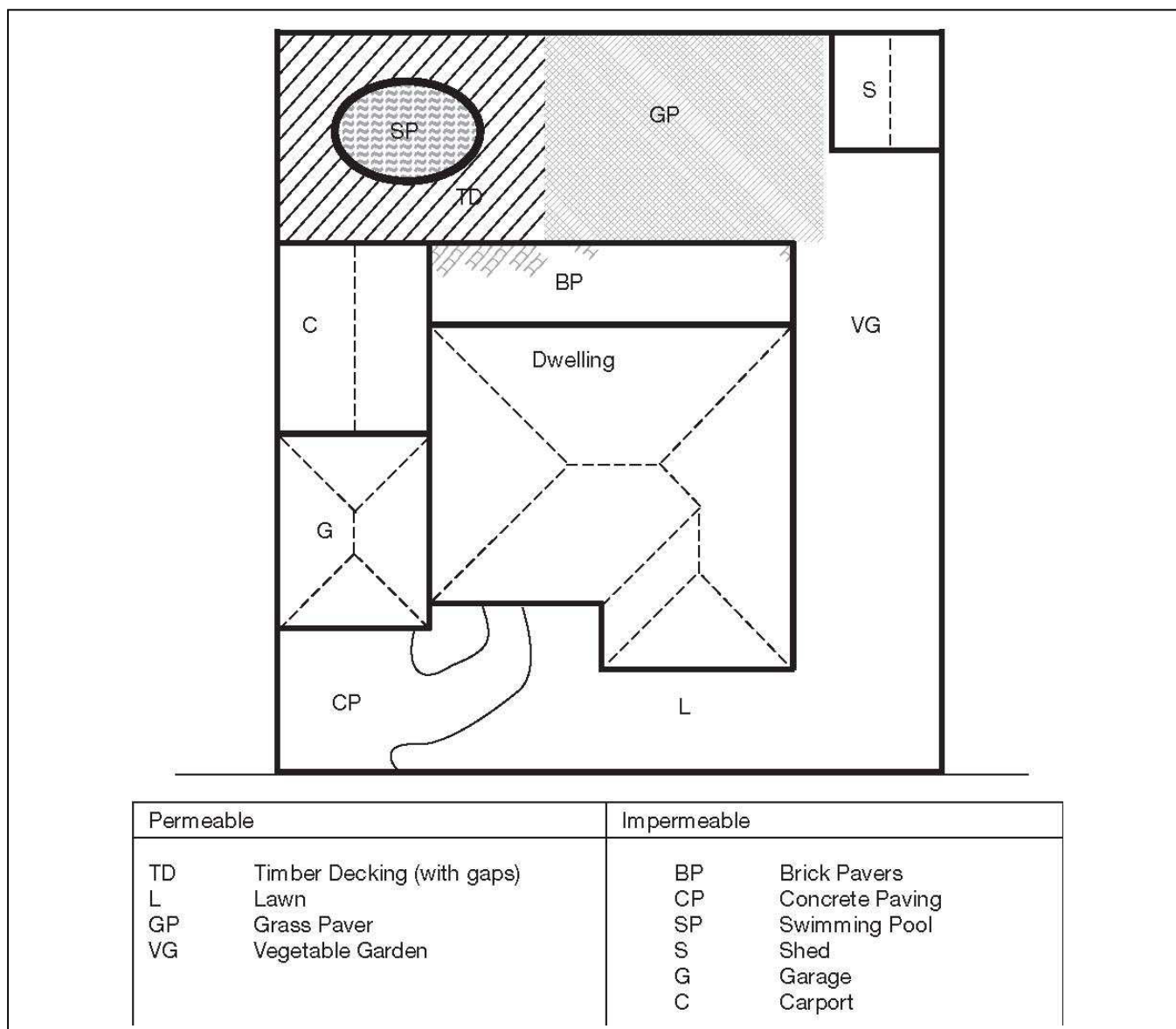
Regulation 411(2)

The following drawing identifies different types of permeable and non-permeable surfaces.

When calculating site coverage, all existing buildings must be included.

Regulation 412 – permeability

This regulation is intended to reduce strain on existing infrastructure systems. The provision of permeable surfaces allows on site infiltration of storm water and reduces the amount of water entering these systems. A permeable surface is one that allows water to be absorbed through the material. Materials laid on a hard compacted base will lose their permeability.



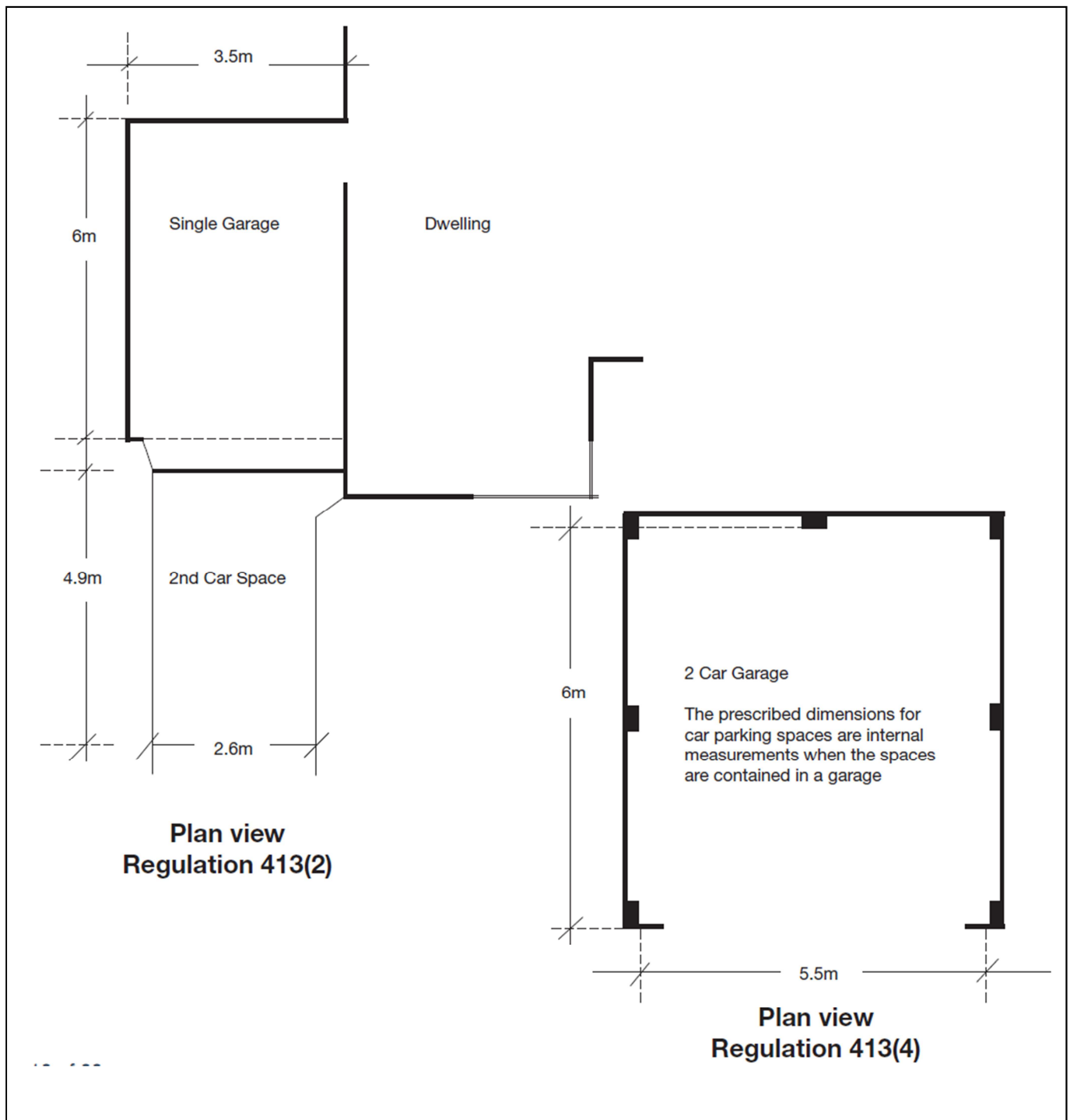
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REGULATION 412 PERMEABILITY PLAN VIEW

Regulation 413 – car parking

The purpose of this regulation is to ensure new dwellings have adequate on-site car parking. Car parking spaces can be nominated anywhere on

an allotment however a complying car parking space must be accessible from the street and be fully contained within the allotment. If the spaces are within a structure the dimensions are to be taken as the internal dimensions of that structure.



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Regulation 414 – side and rear setbacks

The purpose of this regulation is to provide adequate separation between buildings on adjoining allotments, particularly above ground floor level.

Regulation 414(1)

See section on Schedule 5 above.

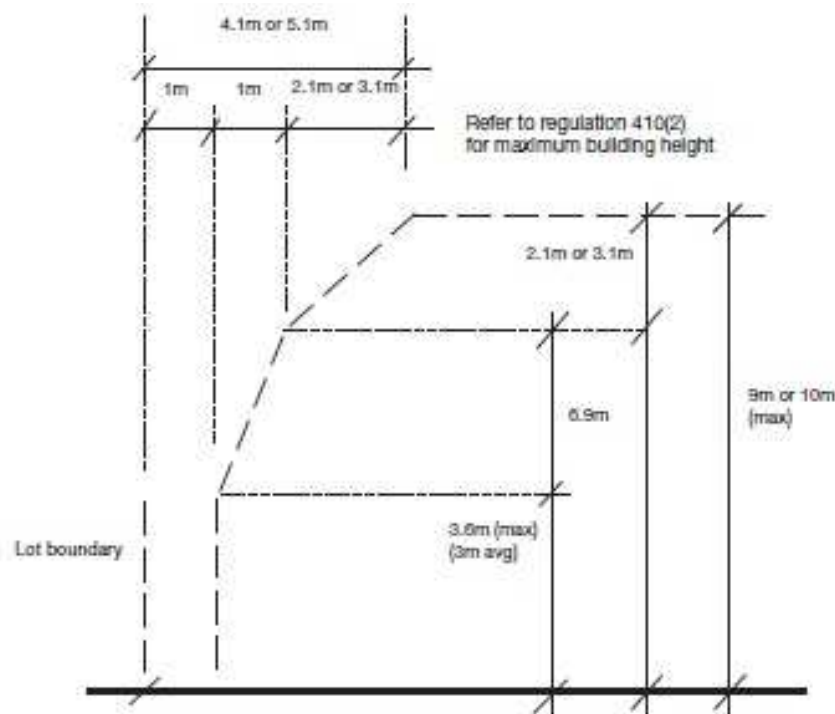
Table 414

The envelope described in this regulation commences at a 1m setback from the boundary and allows a maximum building height of 3.6m at that point. Refer to regulation 415 for walls

constructed on or within 150mm of a boundary, regulation 410(3) for that part of a building that is adjacent to a wall on a boundary and within a 1m setback, and regulation 417 for setbacks of walls opposite north facing windows.

It is advised that regulation 417 is assessed first where there is an existing north facing window as the setback required by this regulation is more onerous than that required by regulation 414.

Refer to sub-regulations (3) and (4) for allowable encroachments into the setbacks.



Regulation 414 Side and Rear Setbacks Table 414

Regulation 415 – walls on boundaries

The purpose of this regulation is to protect the amenity of adjoining allotments by restricting the height and length of walls or carports that can be constructed on or within 150mm of a boundary with the adjoining allotment.

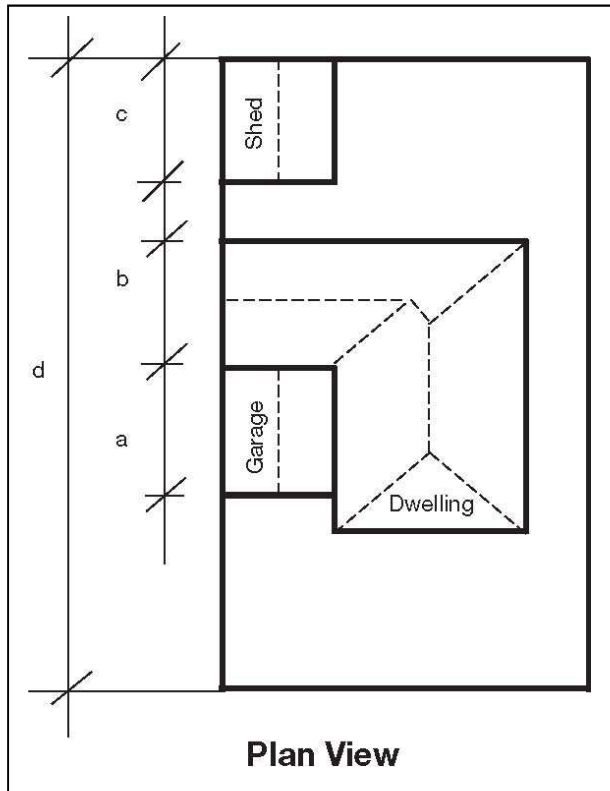
The following diagrams illustrate aspects of regulation 415(2).

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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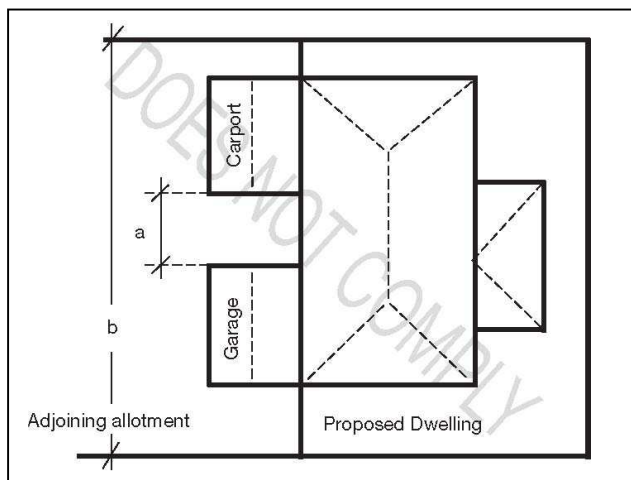
PLAN VIEW REGULATION 415(2)(B) WALLS ON BOUNDARIES

The diagram below shows how regulation 415 relates to that part of the subject boundary as it interfaces with each adjoining allotment.

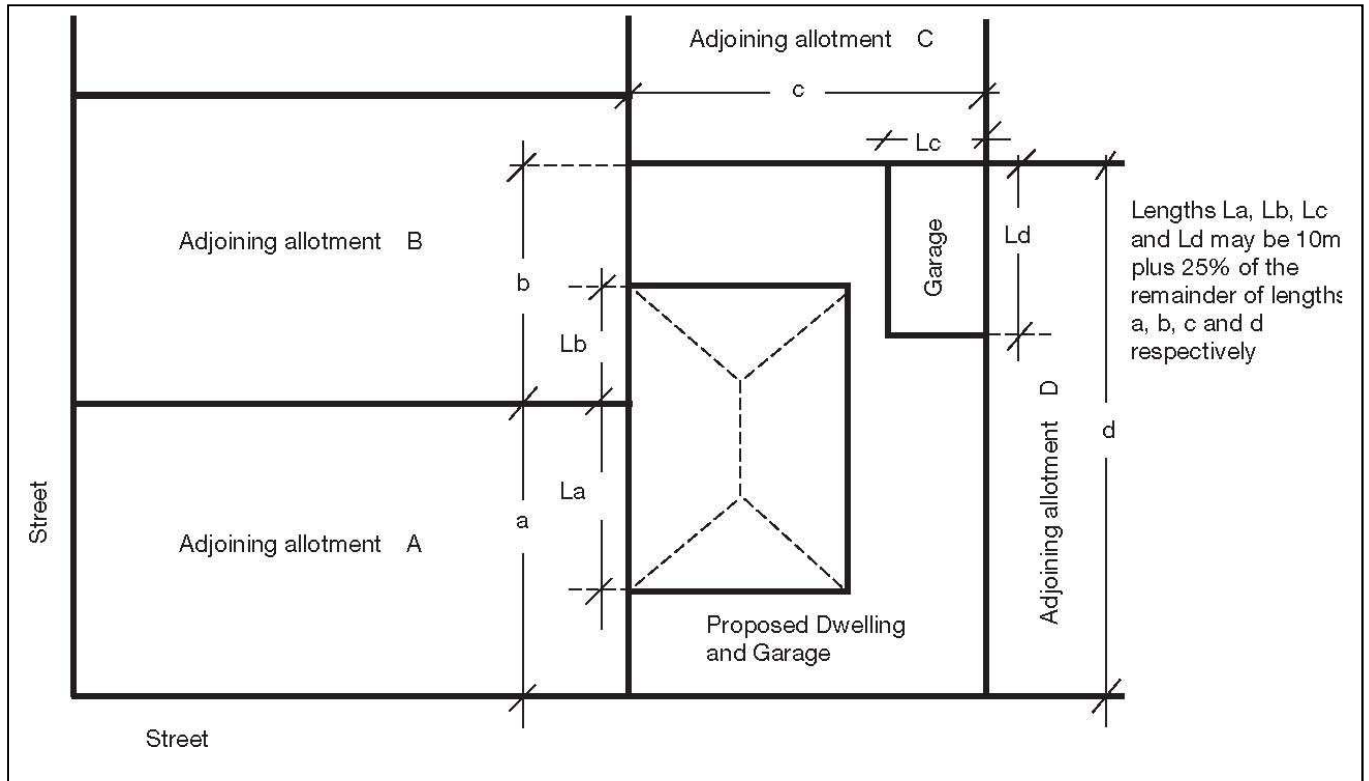
REGULATION 415(2)(A) LENGTH OF WALLS ON BOUNDARY

THE PROPOSAL SHOWN BELOW DOES NOT COMPLY

The portion of the proposed wall marked (a) is not abutting an existing wall or a carport on an adjoining allotment and the length of the proposed wall is also greater than 10m plus 25% of the remainder of the length of the boundary (b). The proposal requires a consent from the relevant council.



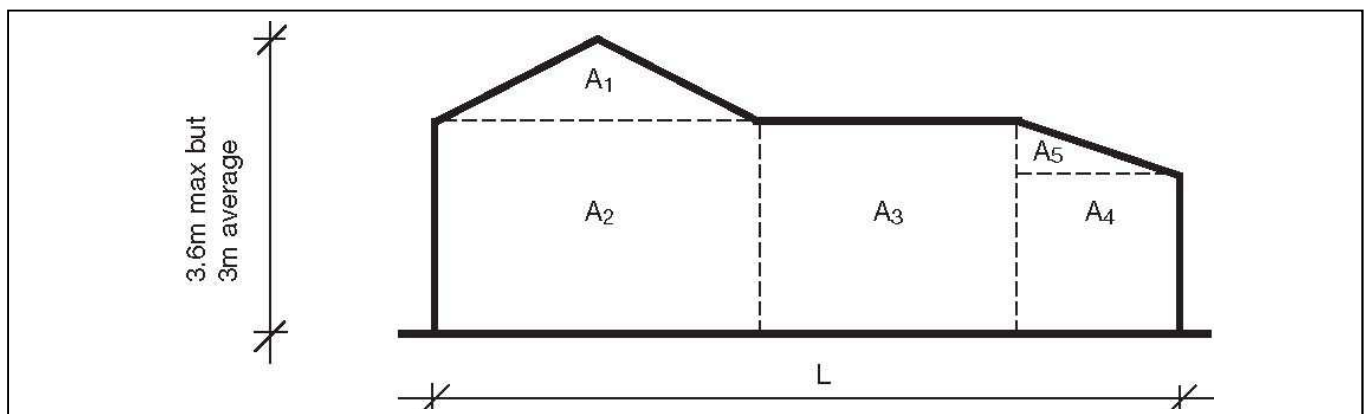
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PLAN VIEW REGULATION 415(2) WALLS ON BOUNDARIES

Regulation 415(3) – Height of walls on boundaries

The average height of a wall on a boundary is not to exceed 3m. The average height is calculated by dividing the total area of the wall by the total length of the wall.



ELEVATION REGULATION 415(3) HEIGHT OF WALL OR CARPORT ON BOUNDARY

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

$$HA = \frac{A1 + A2 + A3 + A4 + A5}{L}$$

where A1 A2 A3 A4 A5 equals the area of that part of the wall

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Despite regulation 415(3), a wall or carport may be built to the same height as an existing wall or carport on an adjoining allotment if it abuts it. This means the proposed and existing wall or carport share the same part of the boundary. See regulation 415(4).

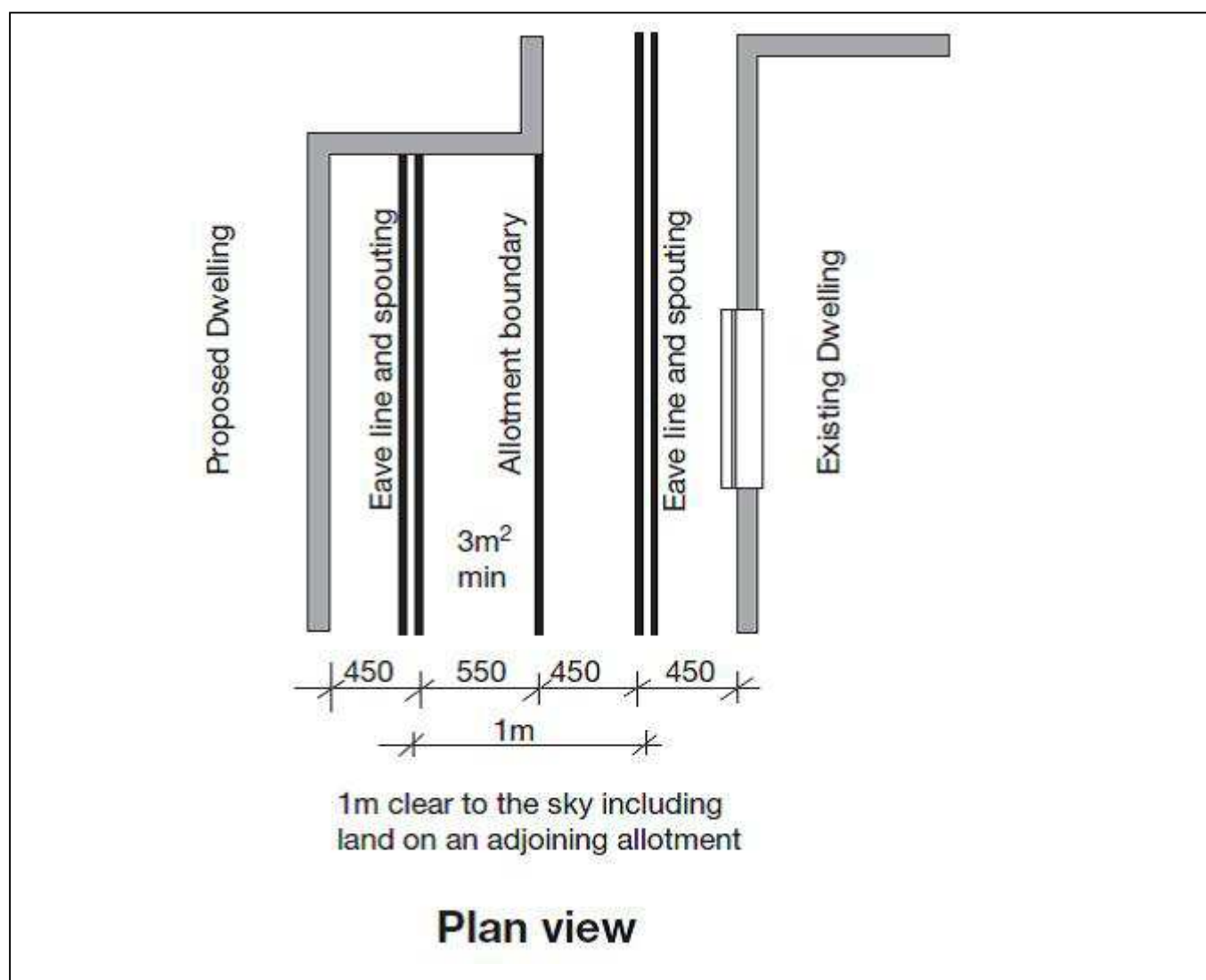
Regulation 416 – daylight to existing habitable room windows

The purpose of this regulation is to ensure

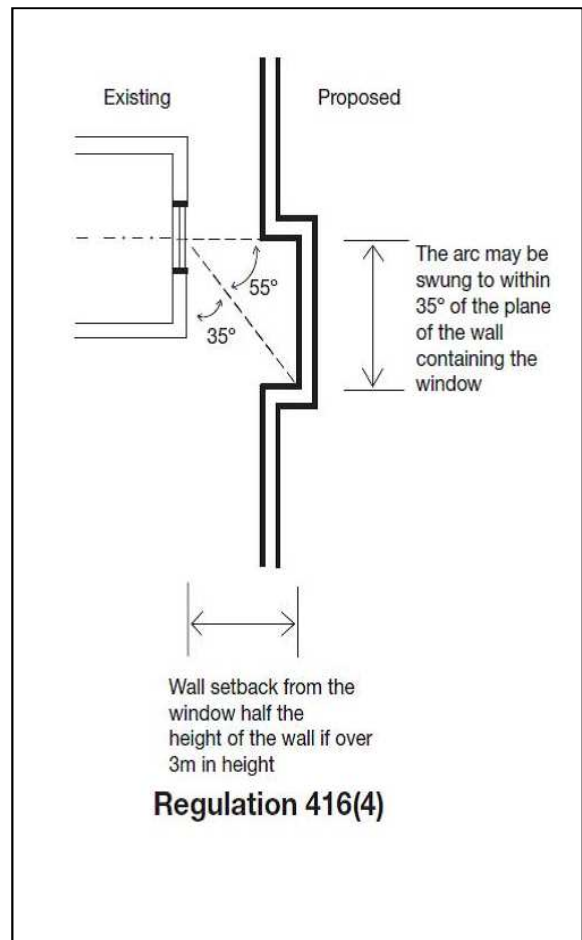
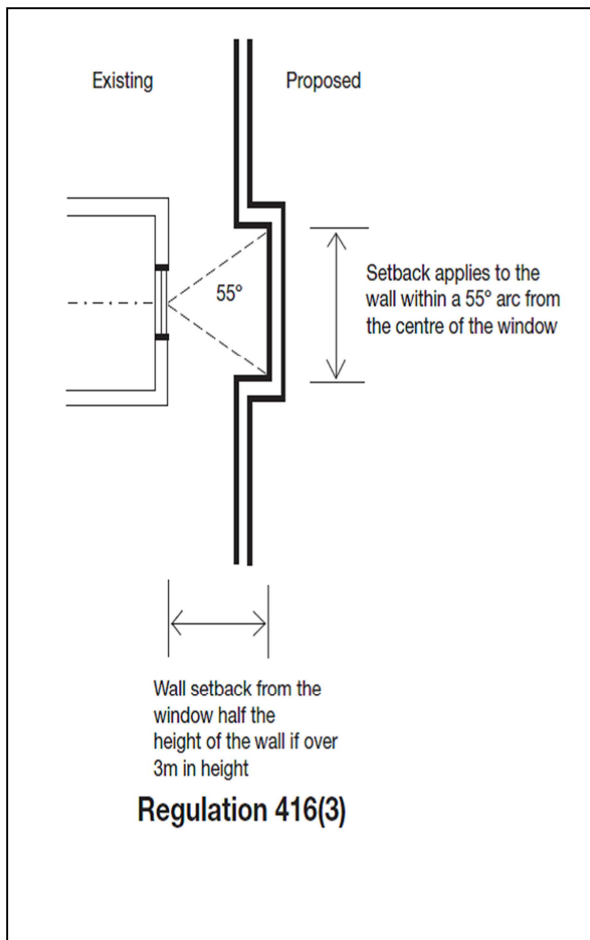
Regulation 416(2) Daylight to existing habitable room windows

Adequate daylight is provided to existing habitable room windows on adjoining allotments.

The regulation is not related to a 'required window' under Volume Two of the Building Code of Australia



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Regulation 417 – solar access to existing north facing windows

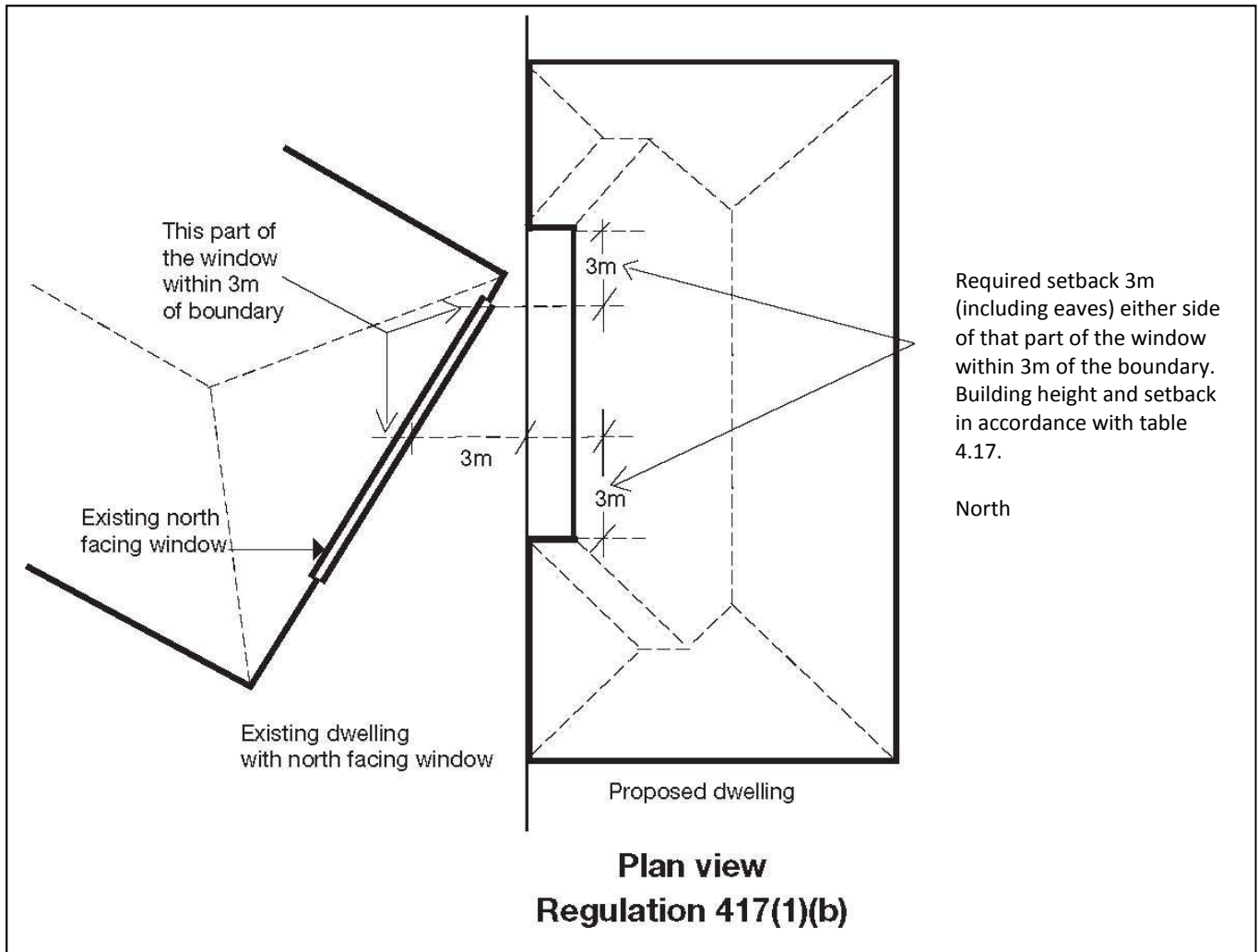
The purpose of this regulation is to protect the energy efficiency of existing dwellings which receive passive solar heating.

Regulation 417(1)

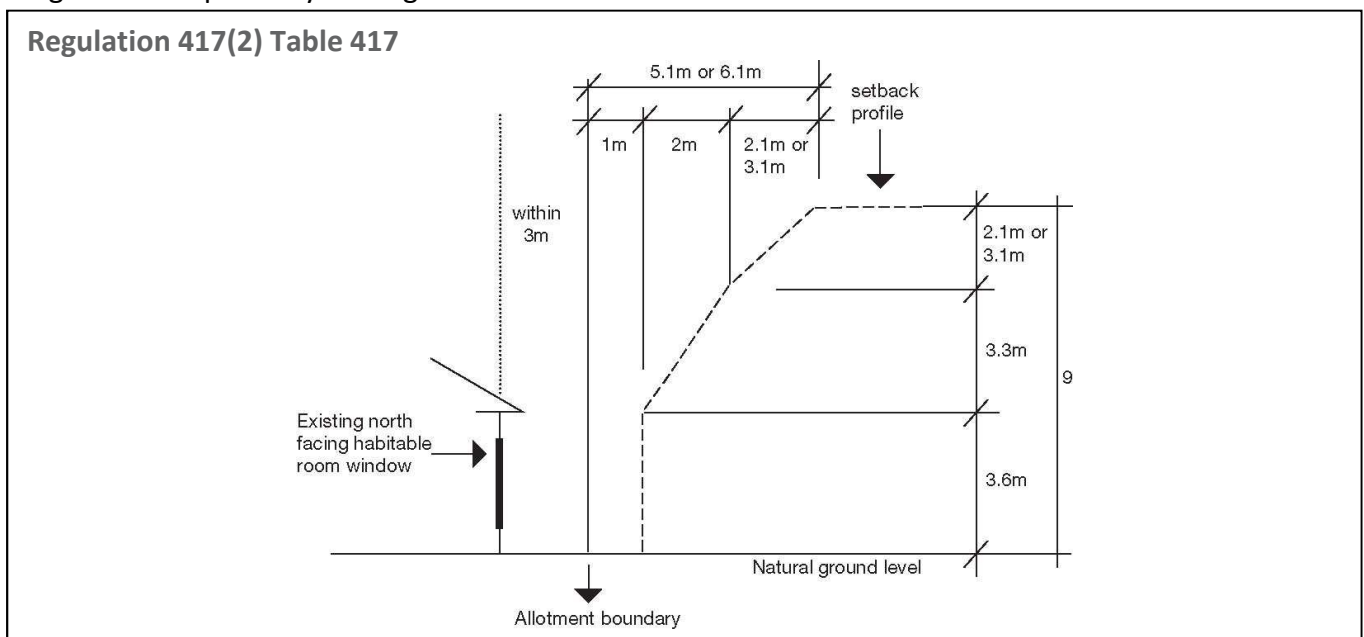
Regulation 417(1)(c) refers to a window oriented towards the boundary. A window is regarded as being oriented towards the boundary if the plane of the glazing is less than 90° from the line of the boundary.

The 3m is measured to the face of the glazing and not the frame of the window. Only the part of the window that is within 3m of a boundary requires protection.

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The following diagram shows the setback to height ratio required by the regulation.



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Regulation 417(3)

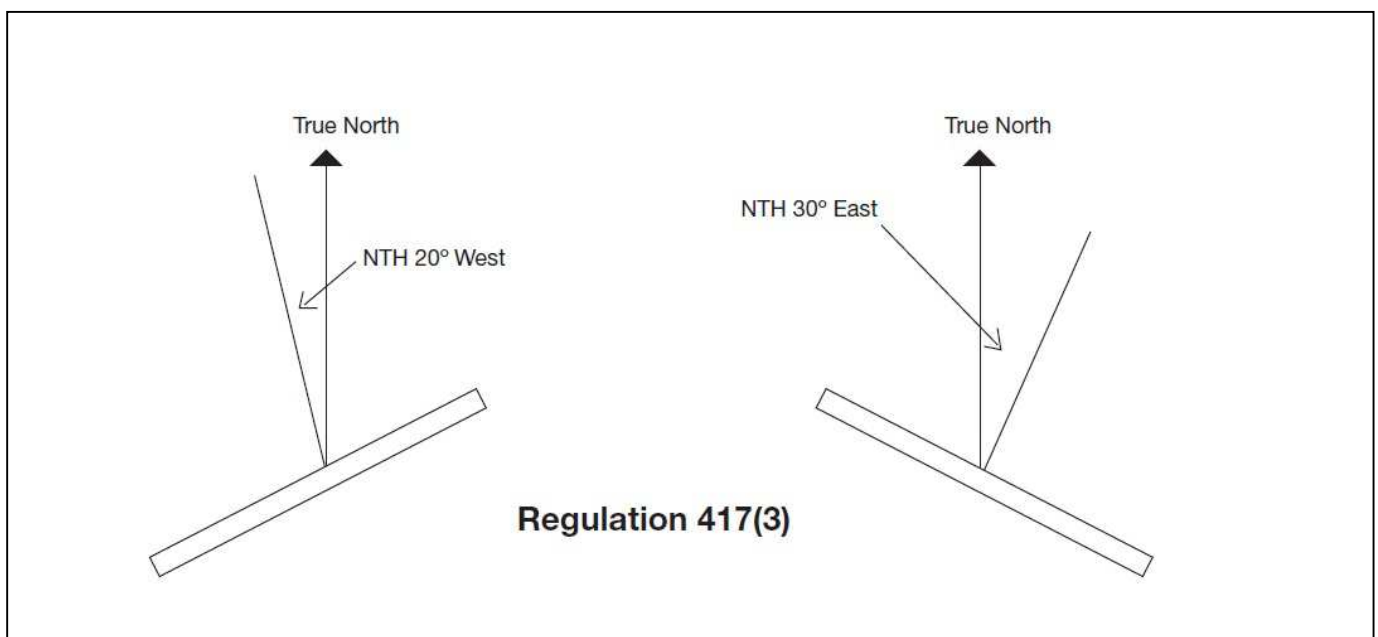
This regulation defines the orientation of a north facing window. The diagram below shows the orientation from north of a “north facing window”.

Whilst the wording of the regulation does not specifically preclude the assessment of shadows cast by vegetation, there are issues such as how established the vegetation is, whether the vegetation is perennial or deciduous, and the ownership of the vegetation to be considered. It

Regulation 418(1)

Because the regulation requires that a proposed building must not reduce the amount of sunlight to an RPOS to less than the minimum area required, consideration must also be given to shadows cast by existing buildings and other permanent structures.

is strongly recommended that shadows cast by existing vegetation not be used to determine compliance. The existence of shadows cast by vegetation is more appropriately used as a basis



Regulation 418 – overshadowing of recreational private open space (RPOS)

The purpose of this regulation is to provide protection of existing RPOS on adjoining allotments from overshadowing by a new dwelling or extension to a dwelling.

It is not the role of the RBS to identify the RPOS and the area that achieves compliance. This is the responsibility of the applicant to the satisfaction of the RBS. However, it is the role of the RBS to determine the compliance of the proposed building work. Therefore, appropriate information must be provided in the application.

for an application for a consent and report.

The area to be protected is not a fixed area on the ground and might be in differing locations during the course of the 5-hour period.

The minimum area is defined in sub regulation (4) as the lesser of 40m² with a minimum dimension of 3m or 75% of the existing RPOS.

This protected area should not be made up of a number of parcels of RPOS but should be a single area of RPOS.

Regulation 418(2)

This sub regulation requires no further reduction of sunlight to the RPOS if it is not already receiving the amount required under sub regulation (4).

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Regulation 418(5)

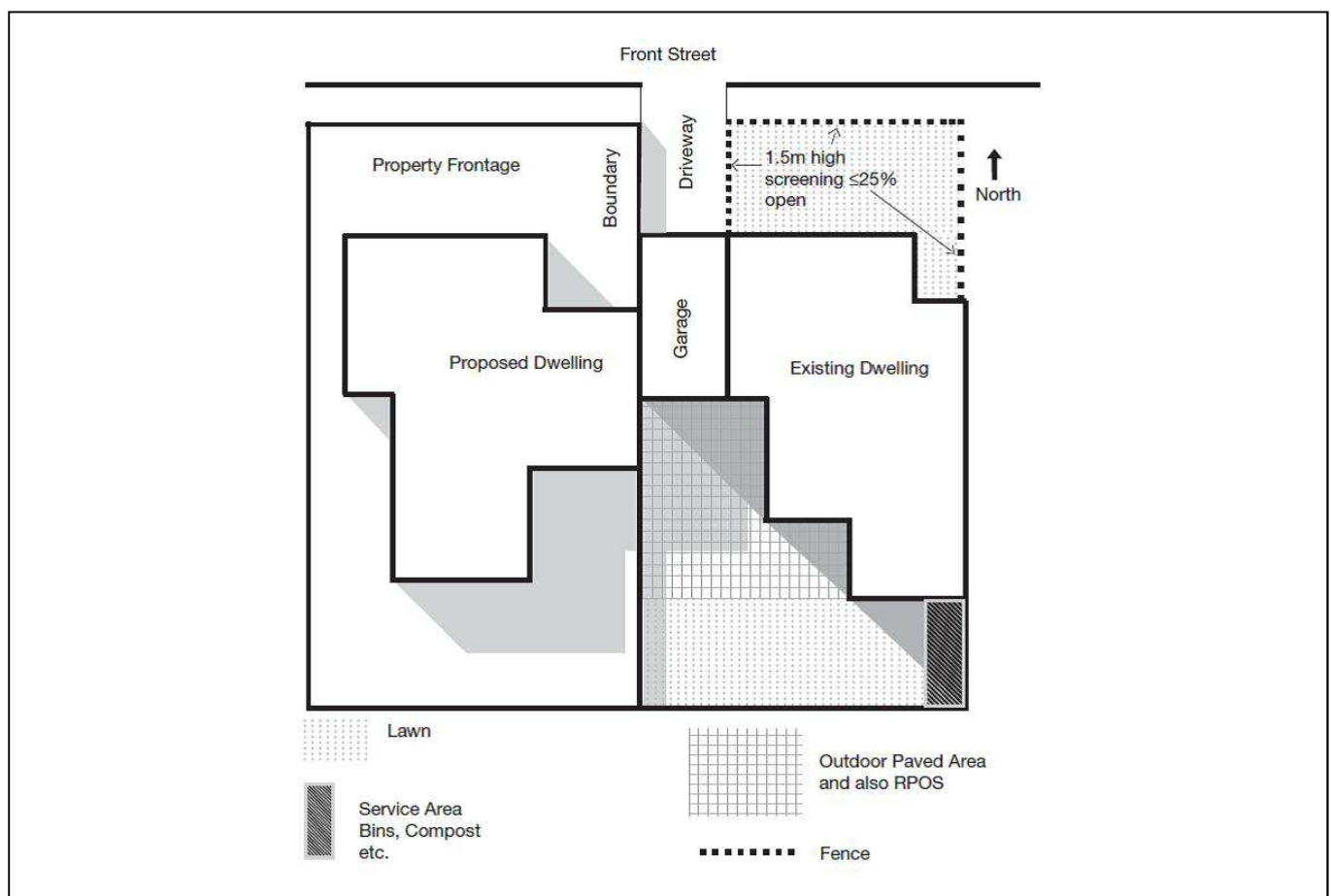
The definition of recreational private open space includes the term “primarily intended for outdoor recreation activities”. It is anticipated that in most instances the RPOS of the adjoining allotment will be the same area as the private open space as defined in regulation 105 except for those areas that are clearly not RPOS. These might include a dedicated clothesline area, bin storage/compost areas, service areas, narrow access ways providing access to service areas and any area within the front setback that is not screened or fenced in accordance with the definition of RPOS. Other areas can be included in the calculation of the total area of RPOS if they are potentially available for use as RPOS and they cannot be excluded as having some other primarily non-recreational use.

It is expected that the definition will be used principally to eliminate an area from being

considered as being RPOS. For instance, a driveway used as a cricket pitch is not primarily intended for use as outdoor recreational activity. Its primary use is for vehicle access. Similarly, a narrow pathway to the service side of a house will primarily be intended to provide access to those services.

As can be seen, the total area of RPOS may include a number of different areas. For the purposes of the regulation, the minimum area to be protected is a single part of the total identified area of RPOS. The area required to be protected can be anywhere within that total area of RPOS but should be a single parcel of land.

The following diagram shows a shadow diagram at 2pm showing shadows of the proposed building, the existing building and fences.



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To determine the RPOS, deduct the areas that are not primarily intended for outdoor recreation activities from the area of private open space as defined in regulation 105. In this instance, the driveway and the service area would be eliminated. The remainder is then regarded as the area of RPOS. The diagram shows a paved outdoor dining area that is clearly RPOS but has been nearly completely overshadowed.

However, there are still two areas available for use as RPOS including the front yard which is screened in accordance with regulation 418(5)(a)(ii), the paved courtyard and the rear lawn area.

The proposal complies because there is still 40m² of RPOS available in either the remainder of the rear yard or in the fenced portion of the front yard.

Either of these two areas achieves compliance.

Regulation 419 – overlooking

The purpose of this regulation is to protect existing habitable room windows and secluded private open space on an adjoining allotment from overlooking.

It is not the role of the RBS to identify the SPOS and the area that achieves compliance. This is the responsibility of the applicant to the satisfaction of the RBS. However, it is the role of the RBS to determine the compliance of the proposed building work. Appropriate information must be provided in the application.

Regulation 419(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.

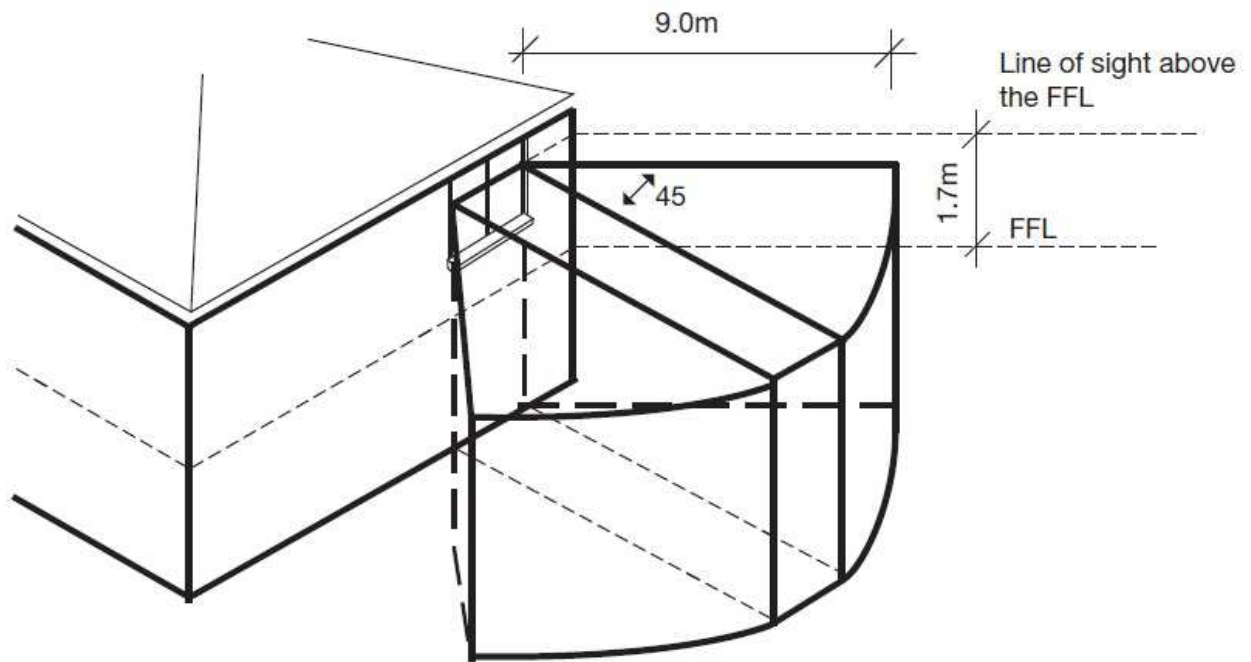
The regulation requires a restriction to the provision of a direct line of sight into a habitable room window or onto a secluded private open space of an adjoining allotment and provides some basic, simple solutions to achieving compliance such as the use of screening or obscure glass.

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 instance 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 secluded private open space or habitable room window of a lower storey on the adjoining allotment. Documentation should be provided to the RBS that clearly shows the solution prevents a direct line of sight.

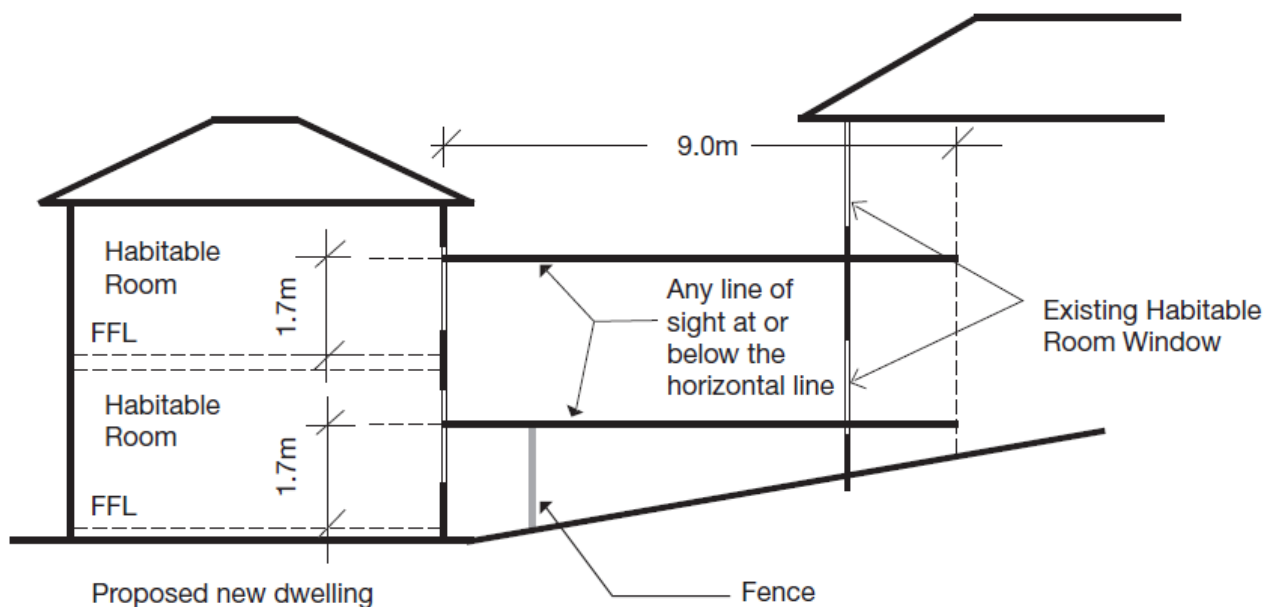
Overlooking into habitable room windows

The following diagram shows a three dimensional view of the space to be considered when assessing overlooking into habitable room windows on an adjoining allotment.

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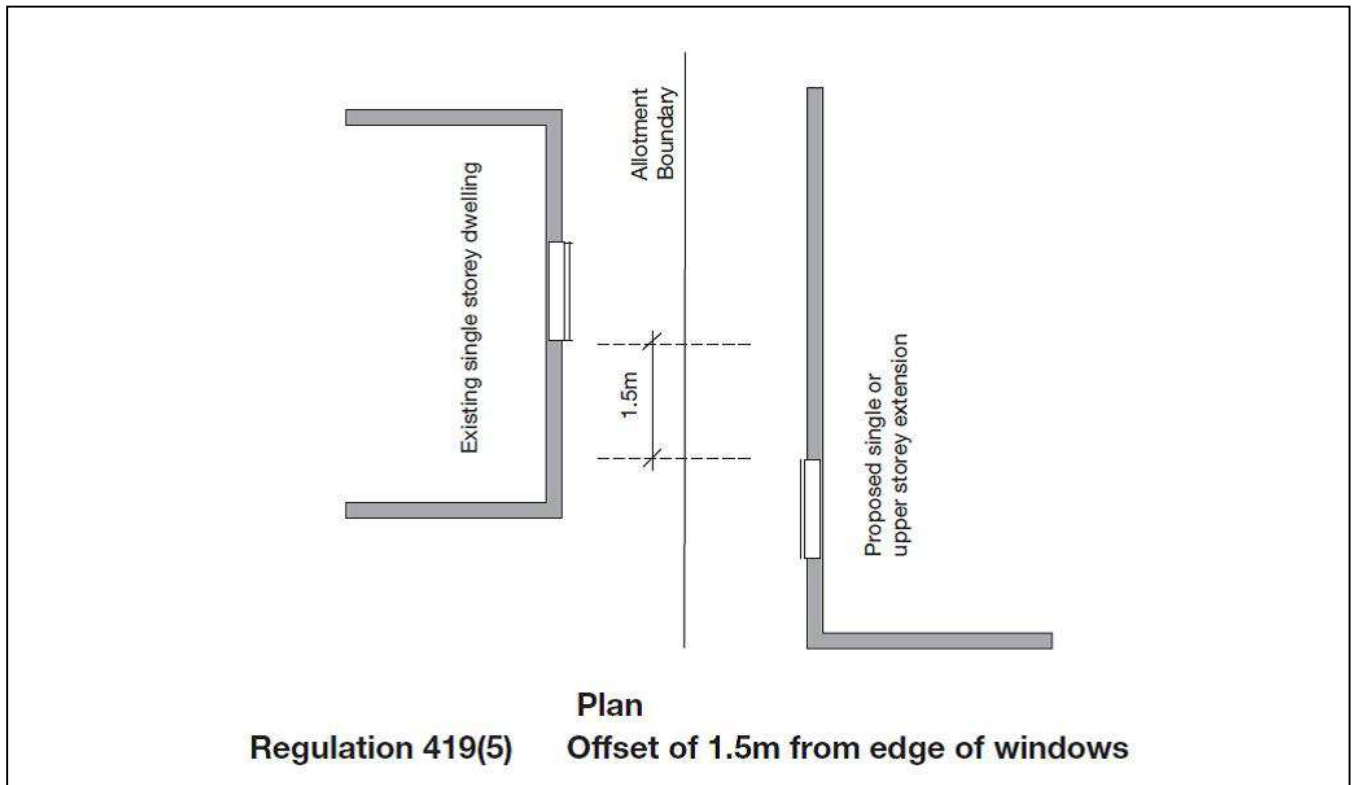


Regulation 419(2) Overlooking of habitable room windows
Axiometric view



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Regulation 419(2) Overlooking of habitable room windows

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Regulation 419(8)

This regulation provides a type of 'deemed to satisfy' provision. If a floor level and visual barrier are provided in accordance with this regulation then the remainder of regulation 418 does not apply and need not be assessed.

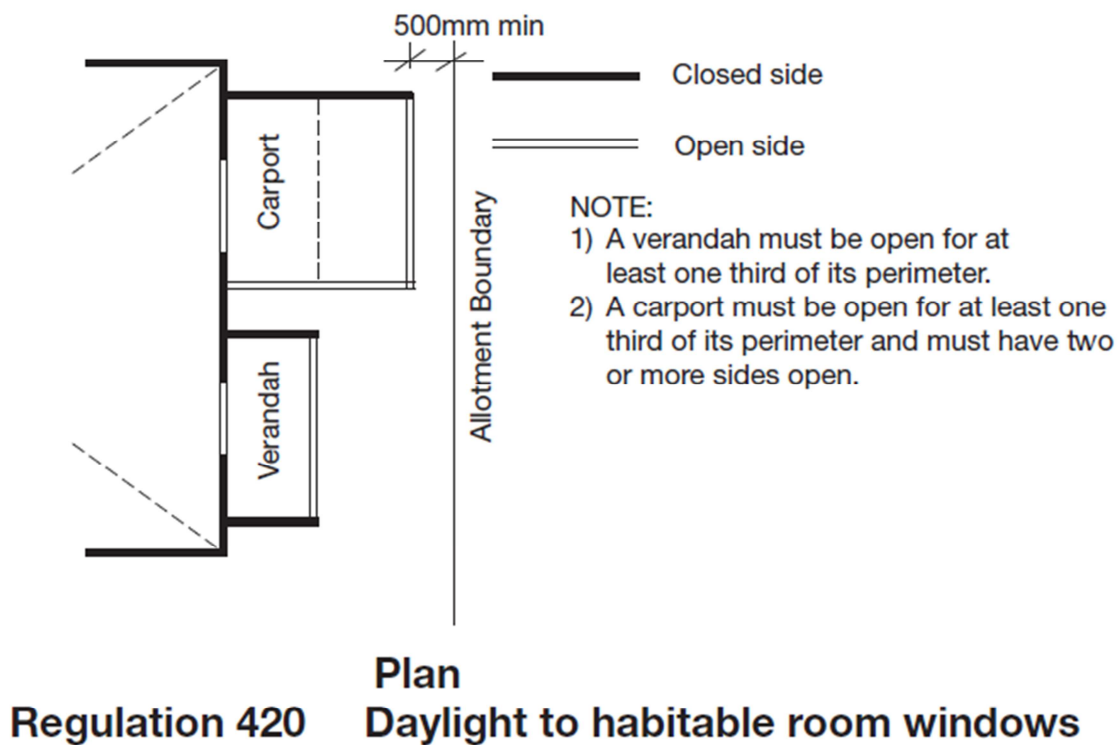
This does not mean that the applicant must have a 1.8m high visual barrier at the boundary if the floor level is less than 800mm above the ground level at the boundary.

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 419(8) have not been met and the remainder of regulation 418 would apply and need to be assessed to determine compliance.

Regulation 420 – daylight to habitable room windows

The purpose of this regulation is to ensure that all windows of habitable rooms receive adequate light.

Practice Note 2006-47



DIVISION 3 – SITING OF CLASS 10A BUILDINGS

Regulation 422 - Siting of Class 10a buildings
This regulation is self explanatory.

DIVISION 4 – CLASS 10B BUILDINGS

Regulation 424

Regulation 424 applies maximum heights for a fence within 3m of the front street alignment depending on the type of road or street. Schedule 5 of the Regulations is relevant for certain municipalities.

Other matters

Regulations 425, 426, 428, 429 and 430 essentially replicate the equivalent regulations in Division 2 being regulations 414, 415, 416, 417 and 418 respectively.

Regulation 427, Fences on street alignments, and Regulation 431, Masts poles etc need no explanation.

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

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