



Victoria Government Gazette

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Building Act 1993

MINISTER'S GUIDELINES

Instrument of Revocation

I, Rob Hulls, Minister for Planning, pursuant to section 41A of the **Interpretation of Legislation Act 1984**, hereby revoke the Minister's Guidelines (Guidelines) made pursuant to sections 188 and 188A of the **Building Act 1993** (the Act) and listed below with effect from 13 June 2006:

Guidelines made under section 188 of the Act to be revoked:

Number	Title
MG/08	Issuing of occupancy permits
MG/09	Issuing of building permits (demolition/removal) and the owner-builder
MG/13	Exercise of discretion when applying a new building regulation or an amendment to a building regulation

Guideline made under section 188A of the Act to be revoked:

Number	Title
MG/12	Siting and design of single dwellings

SIGNED at Melbourne in the State of Victoria

Dated 2 July 2006

ROB HULLS, MP
Minister for Planning

SPECIAL

Building Act 1993

MINISTER'S GUIDELINES

I, Rob Hulls, Minister for Planning, pursuant to section 188 of the **Building Act 1993**, hereby issue the following guidelines with effect from 13 June 2006:

SIGNED at Melbourne in the State of Victoria

Dated 2 July 2006

ROB HULLS, MP
Minister for Planning



MG/08

Minister's Guideline

Issued June 2006

Issuing of occupancy permits

This replaces previous *Minister's Guideline MG/08* issued June 2005

Pursuant to section 188(1)(c) of the Building Act 1993 (the Act) I hereby issue the following Guideline concerning the functions of municipal building surveyors and private building surveyors in respect of Part 10 of the Building Regulations 2006 (the Regulations). Note that section 188(7) of the Act provides that municipal building surveyors and private building surveyors must have regard to this Guideline in carrying out their functions.

Municipal building surveyors and private building surveyors must not issue an occupancy permit for a building or place of public entertainment unless:

1. an application has been made in the relevant form set out in Schedule 2 of the Regulations;
2. he or she is satisfied that any necessary consents from the reporting authorities listed in Part 10 of the Regulations have been obtained;
3. he or she is satisfied that services such as gas, water, sewerage, drainage and electricity, insofar as they are necessary to make the building or place of public entertainment suitable for occupation, have been installed and are operational; and
4. he or she lists on the occupancy permit all essential services required under Part 12 of the Regulations and specifies the level of performance for each essential safety measure.

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MG/09

Minister's Guideline

Issued June 2006

Issuing of building permits (demolitions/removal) and the owner builder

This replaces previous *Minister's Guideline MG/09* issued June 2005

Pursuant to section 188(1)(c) of the Building Act 1993 (the Act) I hereby issue the following Guideline concerning the functions of municipal building surveyors and private building surveyors in respect of section 24(1)(c) of the Act. Note that section 188(7) of the Act provides that municipal building surveyors and private building surveyors must have regard to this Guideline in carrying out their functions.

A relevant building surveyor must not issue a building permit for the demolition or removal of a building under section 24 of the Act unless:

the person nominated as the builder on the application for a building permit is a registered building practitioner in the appropriate category or class having regard to section 176(7) of the Act.

If the owner is nominated as the builder it is the owner who must demonstrate that he or she has the necessary knowledge, experience, equipment and storage facilities to properly conduct the demolition operations as required by Regulation 304 of the Building Regulations 2006. It will be expected in these circumstances that it will be rare for a building permit to demolish a building to be issued to an owner builder.

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MG/13

Minister's Guideline

Issued June 2006

Exercise of discretion when applying a new building regulation or an amendment to a building regulation

This updates previous *Minister's Guideline MG/13* issued June 2005

Pursuant to section 188(1)(a) of the Building Act 1993 (the Act) I hereby issue the following guideline concerning discretion under section 10 of the Act to apply to new building regulations or an amendment to a building regulation. Section 188(7) of the Act provides that municipal building surveyors and private building surveyors must have regard to a relevant guideline in carrying out a function under the Act.

1. Section 10 and the purpose of this Guideline

Section 10(2) relates to the application of a building regulation or an amendment to a building regulation where substantial progress in the design of the building was made prior to the commencement of the operation of the regulation or amendment. The purpose of this Guideline is to provide guidance to the relevant building surveyor in the operation of section 10(2).

2. Section 10 in relation to schedules to planning schemes

Section 11 of the Act gives primacy to a provision of a planning scheme over a building regulation that regulates the same matter. Where a planning permit has been issued, the relevant building surveyor is not required to assess those regulations that are equivalent to, or are "the same matter" as contained in the planning scheme.

Schedules to planning schemes are adopted under Schedule 5 of the *Building Regulations 2006* (the Regulations). A schedule to a zone in a planning scheme does not have to be complied with in the building system until it is referenced in schedule 5 of the Regulations.

Once referenced in Schedule 5 of the Regulations, section 10 of the Act may apply. One of the effects of section 10 is that if the relevant building surveyor is satisfied and certifies in writing that substantial progress was made on the design of the building before the amendment commenced, the regulations, as they existed before the amendment will apply to that building work.

3. Section 10(2)

Section 10(2) provides that if a building surveyor is satisfied and certifies in writing that substantial progress was made on the design of a building prior to a building regulation or amendment commencing, then the building regulation or amendment does not apply to the carrying out of the relevant building work. Section 10(2) provides discretion for a relevant building surveyor to determine what constitutes substantial progress in a particular case. In exercising that discretion regarding the application of the regulation, the relevant building surveyor must be satisfied that the design relates to the proposed building on a particular allotment.

In the case of 'stock' or 'standard' designs commonly offered by volume builders, the relevant building surveyor should not certify that substantial progress has been made on the design unless the 'stock' or 'standard' design relates to the particular allotment on which the building is proposed to be constructed. This may be evidenced by:

1 of 2



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Building Commission



MG/13

Minister's Guideline

- (a) a contract having been signed to have the building of that design constructed on the allotment, or
- (b) by a deposit having been paid for the construction of a building of that design on the relevant allotment prior to the commencement of the regulation or amendment.

In the case of an individual 'one off' design, the relevant building surveyor must be satisfied that the design relates to the proposed building to be constructed on the relevant allotment and that substantial progress was made on the design prior to the coming into operation of the new regulation or amendment to the regulations. This may be evidenced by the dating mechanism used by architects and draftspersons on their drawings or by a payment for a completed stage of design development.

ROB HULLS MP
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Building Act 1993

MINISTER'S GUIDELINES

I, Rob Hulls, Minister for Planning, pursuant to section 188A of the **Building Act 1993**, hereby issue the following guideline with effect from 13 June 2006:

SIGNED at Melbourne in the State of Victoria

Dated 2 July 2006

ROB HULLS, MP
Minister for Planning



MG/12

Minister's Guideline

Issued June 2006

Siting and design of single dwellings

This replaces previous *Minister's Guideline MG/12* issued June 2005

Pursuant to section 188 A of the Building Act 1993 (the Act) I hereby issue the following guideline concerning the design and siting of single dwellings. Under clause 4A of Schedule 2 of the Act, a reporting authority must have regard to the guidelines made under section 188A in the cases set out in that clause.

PURPOSE OF GUIDELINE

The purpose of this Guideline is to set out the considerations to be applied to the design and siting of single dwellings under the building regulations where a reporting authority is considering an application for a report and consent for a variation to the standards applying to the design and siting of single dwellings. It should be noted that the definition of single dwellings includes a Class 1 building and a Class 10 building associated with a Class 1 building.

Each provision comprises a statement of the objective and matters to be considered in deciding if the objective is met. However, if any matter set out in this Guideline is not met, clause 4A(2)(d) of Schedule 2 of the Act requires that the reporting authority must refuse consent.

MAXIMUM STREET SETBACK

Objective

To facilitate consistent streetscapes by discouraging the siting of single dwellings at the rear of lots.

Decision Guidelines

The reporting authority may give its consent where a single dwelling, other than a fence, does not comply with regulation 408 of the *Building Regulations 2006*, if-

- (a) the setback will be more appropriate taking into account the prevailing setbacks of existing buildings on nearby allotments; or
- (b) the siting of the building is constrained by the shape and or dimensions of the allotment; or
- (c) the siting of the building is constrained by the slope of the allotment or other conditions on the allotment; or
- (d) there is a need to increase the setback to maximise solar access to habitable room windows and or private open space; or
- (e) the setback will be more appropriate taking into account the desire or need to retain vegetation on the allotment; and
- (f) the setback is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the Planning and Environment Act 1987; and
- (g) the setback will not result in a disruption of the streetscape; and
- (h) the setback is consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme.

1 of 9



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MG/12

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MINIMUM STREET SETBACK**Objective**

To ensure that the setbacks of buildings from a street respect the existing or preferred character of the neighbourhood and make efficient use of the site.

Decision Guidelines

The reporting authority may give its consent where a single dwelling, other than a fence, does not comply with regulation 409 of the *Building Regulations 2006*, if –

- (a) the setback will be more appropriate taking into account the prevailing setback within the street; or
- (b) the setback will be more appropriate taking into account the preferred character of the area, where it has been identified in the relevant planning scheme; or
- (c) the siting of the building is constrained by the shape and or dimensions of the allotment; or
- (d) the siting of the building is constrained by the slope of the allotment or other conditions on the allotment; or
- (e) there is a need to decrease the setback to maximise solar access to habitable room windows and or private open space; or
- (f) the setback will be more appropriate taking into account the desire or need to retain vegetation on the allotment; and
- (g) the setback is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the Planning and Environment Act 1987; and
- (h) the setback will not result in a disruption of the streetscape; and
- (i) the setback is consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme.

2 of 9

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BUILDING HEIGHT**Objective**

To ensure that the height of buildings respects the existing or preferred character of the neighbourhood.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 410 of the *Building Regulations 2006*, if –

- (a) the height will be more appropriate taking into account the prevailing heights of existing buildings on nearby allotments; or
- (b) the height will be more appropriate taking into account the preferred character of the area, where it has been identified in the relevant planning scheme; and
- (c) the height is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the *Planning and Environment Act 1987*; and
- (d) the height will not result in a disruption of the streetscape; and
- (e) the height is consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme.

SITE COVERAGE**Objective**

To ensure that the site coverage respects the existing or preferred neighbourhood character and responds to the features of the site.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 411 of the *Building Regulations 2006*, if –

- (a) the site coverage will be more appropriate taking into account the preferred character of the area, where it has been identified in the relevant planning scheme; or
- (b) the site coverage will be consistent with that of existing development on the allotment, if applicable; and
- (c) the site coverage is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the *Planning and Environment Act 1987*; and
- (d) the site coverage is consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme.

3 of 9

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PERMEABILITY**Objective**

To reduce the impact of increased stormwater run-off on the drainage system and to facilitate on-site stormwater infiltration.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 412 of the *Building Regulations 2006*, if –

- (a) the amount of impermeable surfaces would be consistent with that of existing development on the allotment, if applicable; or
- (b) the capacity of the drainage network servicing the allotment is able to accommodate the additional stormwater that the development will cause; or
- (c) on-site stormwater retention is able to accommodate the additional stormwater that the development will cause.

CAR PARKING**Objective**

To ensure that carparking is adequate for the needs of the residents.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 413 of the *Building Regulations 2006*, if –

- (a) the anticipated residents are likely to generate a lesser demand for carparking; or
- (b) the provision of carparking on the allotment would reduce the on-street carparking by equal to or more than the number of carparking spaces that would be provided on the allotment; or
- (c) the dimensions of the allotment provide insufficient width and/or depth to enable the provision of the required carparking on the allotment; or
- (d) the location of existing development on the allotment provides insufficient width and/or depth to enable the provision of the required carparking on the allotment; or
- (e) the availability of public transport and on-street parking would lessen the demand for carparking on the allotment; and
- (f) the provision of carparking is consistent with any relevant local planning policy or parking precinct plan in the relevant planning scheme.

4 of 9

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SIDE AND REAR SETBACKS**Objective**

To ensure that the height and setback of a building from a boundary respects the existing or preferred character and limits the impact on the amenity of existing dwellings.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 414 of the *Building Regulations 2006*, if –

- (a) the setback will be more appropriate taking into account the prevailing setback of existing buildings on nearby allotments; or
- (b) the setback will be more appropriate taking into account the preferred character of the area, where it has been identified in the relevant planning scheme; or
- (c) the slope of the allotment and or existing retaining walls or fences reduce the effective height of the building; or
- (d) the building abuts a side or rear lane; or
- (e) the building is opposite an existing wall built to or within 150mm of the boundary; or
- (f) the setback will not result in a significant impact on the amenity of the secluded private open space and habitable room windows of existing dwellings on nearby allotments; and
- (g) the setback is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the *Planning and Environment Act 1987*; and
- (h) the setback will not result in a disruption of the streetscape; and
- (i) the setback is consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme.

5 of 9

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MG/12

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WALLS ON BOUNDARIES**Objective**

To ensure that the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 415 of the *Building Regulations 2006*, if –

- (a) the location, length and or height of the wall will be appropriate taking into account the prevailing location, length and or height of boundary walls of existing buildings on nearby allotments; or
- (b) the location, length and or height of the wall will be more appropriate taking into account the preferred character of the area, where it has been identified in the relevant planning scheme; or
- (c) the slope of the allotment and or existing retaining walls or fences reduce the effective height of the wall; or
- (d) the wall abuts a side or rear lane; or
- (e) the increased wall height is required to screen a box gutter; or
- (f) the location, length and or height of the wall(s) will not result in a significant impact on the amenity of existing dwellings on nearby allotments; and
- (g) the location, length and height of the wall is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the *Planning and Environment Act 1987*; and
- (h) the location, length and height of the wall is consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme.

DAYLIGHT TO EXISTING HABITABLE ROOM WINDOWS**Objective**

To allow adequate daylight into habitable room windows.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 416 of the *Building Regulations 2006*, if –

- (a) the building will not impact on the amenity of existing dwellings on nearby allotments; and
- (b) the building is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the *Planning and Environment Act 1987*.

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SOLAR ACCESS TO EXISTING NORTH-FACING WINDOWS

Objective

To allow adequate solar access into existing north-facing habitable room windows.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 417 of the *Building Regulations 2006*, if –

- (a) the building will not impact on the amenity of existing dwellings on nearby allotments; and
- (b) the building is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the *Planning and Environment Act 1987*.

OVERSHADOWING OF SECLUDED PRIVATE OPEN SPACE

Objective

To ensure buildings do not unreasonably overshadow existing secluded private open spaces.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 418 of the *Building Regulations 2006*, if –

- (a) the proposed building will not significantly impact on the amenity of the secluded private open space(s) on nearby allotments; and
- (b) the building is consistent with a building envelope that has been approved under a planning scheme or planning permit and or included in an agreement under section 173 of the *Planning and Environment Act 1987*.



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MG/12

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OVERLOOKING**Objective**

To limit views into existing secluded private open space and existing habitable room windows.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 419 of the *Building Regulations 2006*, if –

- (a) the proposed building will not significantly impact on the amenity of existing dwellings on nearby allotments and or any associated secluded private open space; or
- (b) the building will not significantly increase the level of existing overlooking of habitable room windows of existing dwellings on nearby allotments and or any associated secluded private open space.

DAYLIGHT TO NEW HABITABLE ROOM WINDOWS**Objective**

To allow adequate daylight into new habitable room windows of the dwelling.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 420 of the *Building Regulations 2006*, if –

- (a) the area of the window is larger than 10% of the floor area of the habitable room.

PRIVATE OPEN SPACE**Objective**

To provide adequate private open space for the reasonable recreation and service needs of residents.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a single dwelling, which does not comply with regulation 421 of the *Building Regulations 2006*, if –

- (a) the location of the private open space maximises the solar orientation of the allotment; or
- (b) the availability of, and access to, public open space or communal open space would lessen the demand for private open space on the allotment.

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FRONT FENCE HEIGHT

Objective

To ensure front fence design respects the existing or preferred character of the neighbourhood.

Decision Guidelines

The reporting authority may give its consent to an application for a building permit for a fence, which does not comply with regulation 424 of the *Building Regulations 2006*, if –

- (a) the fence will be more appropriate taking into account the prevailing heights, setbacks and design of existing front fences on nearby allotments; or
- (b) the slope of the allotment and or existing retaining walls or fences reduce the effective height of the wall; or
- (c) the fence is required for the minimisation of noise intrusion; and
- (d) the fence height will not result in a disruption of the streetscape; and
- (e) the fence height, setback and design are consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme.

ROB HULLS MP

Minister for Planning



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