

Building Appeals Board guide to applications for modification and compliance assessments

This updates the previous *Practice Note 2002-39* issued June 2005.

1. Summary

The Building Appeals Board (BAB) is an independent statutory body established under the Building Act 1993 (the Act)¹. This Practice Note provides guidance on making an application to the BAB in accordance with section 160 and 160A of the Act, for modification and compliance assessments.

For the BAB to assess the application appropriately and make a meaningful determination, the quality of the submission is important.

2. Fees

- \$90 (per regulation being determined) for any matter involving a Class 1 or 10 building other than a section 160A application.
- \$200 (per regulation being determined) for any matter involving a Class 2 to 9 building.
- \$200 (per regulation being determined) for any matter under sections 160A of the Act involving a class 1-10 and class 2-9 building.

3. Information to accompany application

It is important the application form is completed accurately to avoid delays. When preparing the submission to accompany the application form, the following information should be incorporated.

A. General requirements (Sections 160 and 160A)

- Describe the background to the proposal. (i.e. proposed building work);
- Describe the nature of the modification(s) or compliance assessment(s). (i.e. reason for the application);
- Where the application relates to the Building Code of Australia (BCA) nominate the applicable relevant primary Performance Requirement(s) together with the Deemed-to-Satisfy Provision(s).

- Indicate why the regulation is inappropriate;
- Indicate why it is reasonable to vary the regulation.

Where the application relates to a BCA Performance Requirement(s), the applicant must provide commentary on each of the individual clauses for each Performance Requirement.

Provide commentary on the issues **relevant to the regulation** to be modified, including but not limited to the following: -

Issues relevant to fire safety:

- fire compartment size;
- fire-source features;
- protection from spread of fire;
- exposure to allotment boundary;
- special characteristics of fuel load;
- potential ignition sources;
- performance of lining materials;
- fire load in escape routes;
- bushfire protection; and
- fire brigade intervention.

Issues relevant to occupant life safety:

- class of building;
- rise in storeys;
- structural stability;
- special characteristics of occupants;
- the extent of the deviation from the Deemed to Satisfy Provision;
- number and width of escape routes;
- clear lines of sight to an exit;
- length of dead-end paths;
- smoke hazard management systems;
- active fire detection and early warning systems;
- internal or external fire suppression systems;
- egress signage and emergency lighting;
- evacuation procedures and staff training;
- health and amenity of occupants; and
- safe movement and access to and within the building.

¹ Pursuant to sections 161 and 162 of the Act, the BAB has powers to make its determination of an application under sections 160 and 160A of the Act, respectively.

Nominate the documentation accompanying the application. (i.e. Drawing numbers, photographs and any other supporting information submitted).

Refer to Appendix A for two examples of modification applications

B. Additional information required only for section 160A application(s)

Building solution(s)

- Nominate the BCA Volume One clause A0.9 or Volume Two clause 1.0.9 assessment method(s) adopted for the application as listed below: -
 - evidence as listed under clause A2.2 of the BCA Volume One or under clause 1.2.2 of the BCA Volume Two;
 - verification methods;
 - comparison with Deemed-to-Satisfy Provisions of the BCA; or
 - expert judgement including details of the qualifications and experience of the person carrying out the assessment;
- Nominate any reference materials, standards, codes of practice, specifications or any other research that has been relied upon in this application;
- Provide conclusion(s) and recommendation(s) in the application satisfying clauses A0.5, A0.8 and A0.10 of the BCA Volume One and 1.0.5, 1.0.8 and 1.0.10 of the BCA Volume Two.

C. Essential safety measures

If an application affects or is reliant upon an essential safety measure(s), use a table similar to the following:

Example: Application to permit extended travel distances.

Essential Safety Measure	Description (design & installation standards)	Maintenance requirements
Path of travel to exits	BCA Part D	Every 3 months to confirm travel paths are intact
Emergency evacuation lighting	BCA Part E4,	Every 3 months to AS1851.10
Automatic Sprinkler System	BCA Part E1	Weekly to AS1851.3

4. Relevant building surveyor comments

Every application to the BAB will require the Relevant Building Surveyor (RBS) to provide their comments. RBS comments should address the requirements of the Act, as follows:

Section 160 Modifications: Provide an opinion that the regulation does not apply/applies with the modifications or variations specified. Also, identify whether you are satisfied that the application is reasonable and not detrimental to the public interest.

Section 160A Compliance assessments: Provide an opinion whether the building solution complies with the *Performance Requirement*, or is equivalent to the *Deemed-to-Satisfy Provision*.

5. Referral of Applications

Before the BAB determines an application for a modification, the BAB must consult applicable referral authorities/bodies to comply with section 162 of the Act. Comments from referral authorities/bodies are subject to a time limitation of 10 business days. If the BAB receives a negative response from the referral authority, comments are then referred to the applicant. If comments are not received within this 10 day period, the application is generally presented to the BAB for consideration. The BAB may decide to grant additional time, or may determine the matter then.

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Below is the list of referral authorities/bodies and the instances which require referral. The BAB may also consult any other body or person, when appropriate.

Relevant Building Surveyor

- All applications relating to a building permit.

Municipal Building Surveyor

- Building regulations 504 to 511, 513 and Part 4
- All residential care buildings, if there is no RBS nominated
- Shared accommodation buildings
- Bushfire prone areas
- Termite risk management.

Department of Human Services

- All hospitals, nursing homes, residential aged care buildings, crematoria, vaults, mortuaries churches and children's service centres (Class 3 & 9), except applications relating to BCA Volume 1 Part B1.
- All residential care buildings (as defined in regulation 708).

Building Commission

- Applications disclosing that any aspect of the matter has been considered by the Building Commission.

Electricity Supply Authority

- For applications relating to electricity sub-stations.

Heritage Victoria

- For buildings included in the Register established under the Heritage Act 1995. Refer to: <http://www.heritage.vic.gov.au/index1.asp> to check such properties.

Chief Officer (MFB & CFA)

- Applications regarding bushfire prone areas.
- Fire safety in buildings included in the Register established under the Heritage Act 1995.
- All residential care buildings for modifications of regulation 708
- Class 1b or 3 buildings for modification of regulation 709
- Shared accommodation buildings for modifications of regulation 710
- All buildings with an effective height of more than 25 metres pertaining to the following Building

Code of Australia - volume 1 clauses (listed in Table 1 below):

- The following classes of building with an effective height of 25 metres or less pertaining to the following Building Code of Australia - volume 1 clauses (listed in Table 1 below):
 - Class 3 and all class 9
 - Class 5, 6, 7 and 8 that exceed the compartment limits set out in Table C2.2.

Table 1

Part C	Part D	Part E	Part G	Part H	Part I
C1.1, C1.4, C1.5, C1.7, C1.10, C1.11, Part C2, Part C3	Part D1, D2.1 to D2.12, D2.18 to D2.22	Parts E1, E2, E3 and E4.9	Parts G3, G4 and G5	H1.1 to H1.3, H1.5	All parts

- The following classes of buildings with an effective height of 25 metres or less pertaining to the following Building Code of Australia - volume 1 clauses (listed in Table 2 below):
 - Class 2
 - Class 4
 - Class 5, 6, 7 and 8 complying with the compartment limits set out in Table C2.2.

Table 2

Part C	Part D	Part E	Part G	Part H	Part I
nil	D1.2 to D1.5	Parts E1 and E2	Parts G3, G4 and G5	nil	All Parts

6. Application forms

Application forms and information sheets can be obtained from the Building Commission's website www.buildingcommission.com.au/. The website is updated regularly with recent determinations on modifications and compliance assessments.

If you have any questions or require assistance in preparing your application, call the Building Appeals Board on (03) 9285 6407.

Appendix A (Example 1)

APPLICATION FOR MODIFICATION Accompanying information

1) Background to proposal

It is proposed to construct four new apartments over a common car park containing 8 vehicles.

2) Nature of modification(s)

1. To permit the window openings facing the western allotment boundary (as shown on the plans), to be within 1.5 metres of a fire source feature.
2. To permit unprotected window openings facing the western allotment boundary (as shown on the plans), to be located within 3 metres of the fire source feature without the required protection.

3) Applicable *Deemed-to-Satisfy Provision(s)*

C3.2 *Protection of openings in external walls*

C3.4 *Acceptable methods of protection*

Relevant *Performance Requirement*

CP2 *A building must have elements, which will to the degree necessary, avoid the spread of fire*

4) Indicate why the regulation is inappropriate

The building consists of multiple dwellings with domestic type fire loads over a common car park. The construction of the building closely resembles a three-storey town house development.

5) Indicate why is it reasonable to vary the regulation(s)

- The adjoining property to the western allotment boundary contains three two-storey units, set back 3.5 metres from the boundary. The setback of 3.5 metres is being used as a driveway access to all three units.
- The adjoining driveway is common property and the likelihood of a building being constructed to the allotment boundary is unlikely. If constructed, it would be of a domestic nature.
- The fire load contained within each proposed unit would be no more than, or similar to, a Class 1 dwelling.
- The ground floor common car park of the proposed development is fire-separated from the apartments via a suspended reinforced concrete slab, achieving an FRL of 120/120/120.
- All other aspects of the proposed building will comply with the minimum requirements of the Building Code of Australia.
- Council's town planning department has endorsed the windows for the proposed construction with a 1.3 metre setback from the western allotment boundary, contravening the Building Regulations and Section 63(4)b) of the *Planning and Environment Act 1987*.

6) Relevant BCA Performance Requirement

CP2

- a) A building must have elements which will, to the degree necessary, avoid the spread of fire
 - (i) to exits; and
 - (ii) to sole-occupancy units and public corridors; and
 - (iii) between buildings; and
 - (iv) in a building.
- b) Avoidance of the spread of fire referred to in (a) must be appropriate to –

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- (i) the function or use of the building; and
- (ii) the fire load; and
- (iii) the potential fire intensity; and
- (iv) the fire hazard; and
- (v) the number of storeys in the building; and
- (vi) its proximity of other property; and
- (vii) any active fire safety systems installed in the building; and
- (viii) the size of any fire compartment; and
- (ix) fire brigade intervention; and
- (x) other elements they support; and
- (xi) the evacuation time.

Comments on individual clauses of the Performance Requirement

a) (i) N/a

a) (ii) N/a

a) (iii) *Between buildings*

The western window openings for the proposed building are perpendicular to the fire source feature and are setback 1.3metres. A 3.5metre setback from the adjoining property units and a 1.3metre setback on the subject site provides sufficient fire separation between the buildings.

a) (iv) N/a

b) (i) *Function or use of the building*

The use of the building will be for domestic purposes and the car park will accommodate 8 vehicles.

b) (ii) *Fire load*

A domestic type fire load will be contained within the building.

b) (iii) *Potential fire intensity*

The proposed building is capable of containing a fire within the sole occupancy units for 90 minutes. Materials will be predominantly non-combustible, including concrete floor slabs, concrete panel walls and metal deck roof.

b) (iv) N/a

b) (v) N/a

b) (vi) N/a

b) (vii) N/a

b) (viii) N/a

b) (ix) *Fire brigade intervention*

The local Metropolitan Fire Brigade has a very acceptable response time, as they are located within 10km of the subject site.

b) (x) N/a

b) (xi) N/a

7) Issues relevant to the regulation being modified

- **Class of building –**

This development is very similar to a Class 1 three-story townhouse.

- **Fire-source feature –**

The fire source feature is the western allotment boundary. The adjoining unit development is set back 3.5 metres from the common allotment boundary. The area between the building and the boundary is used as a driveway to provide access to the units. Therefore, it can be considered that sufficient fire separation is achieved.

- **Extent of deviation from the Deemed-to-Satisfy Provisions**

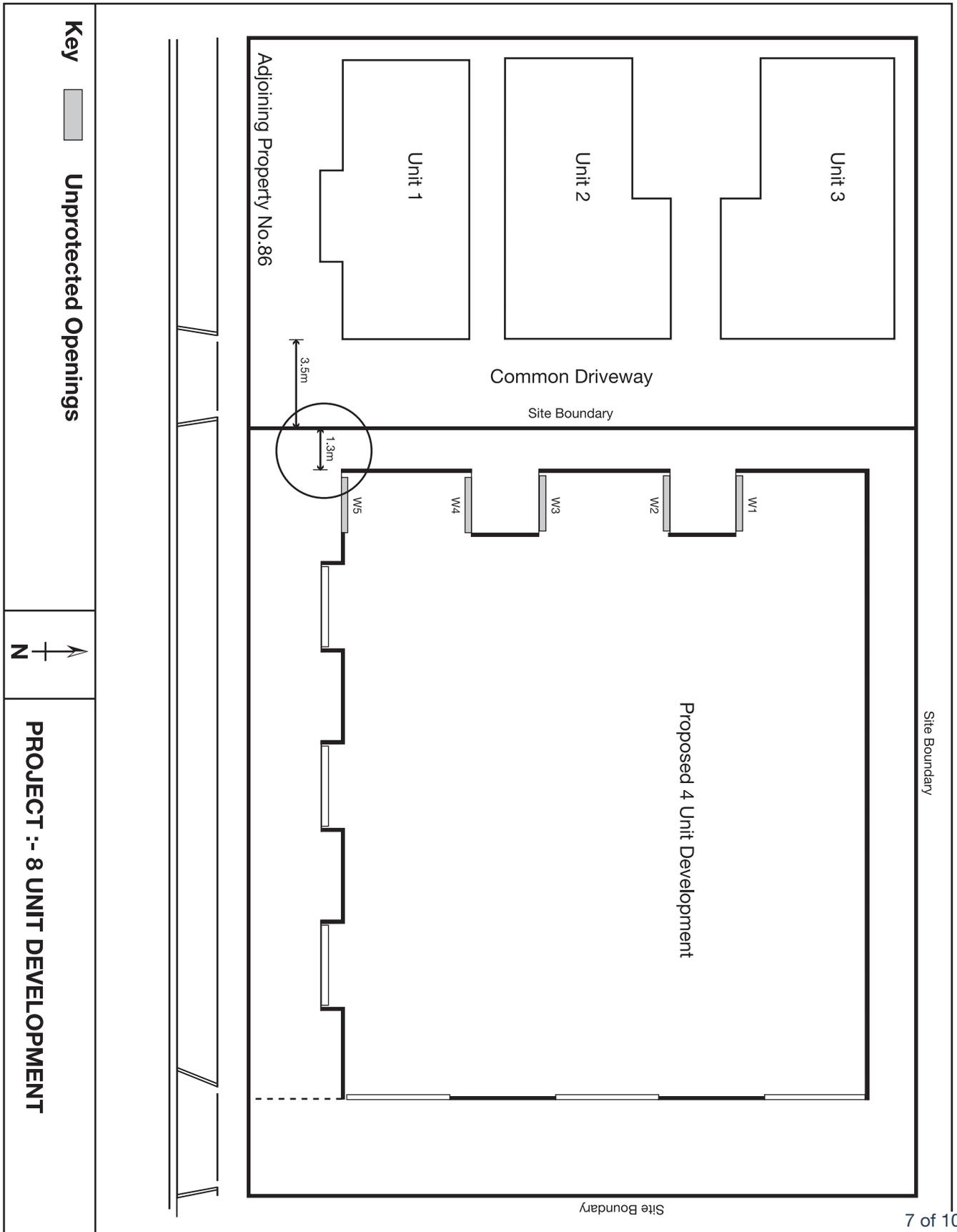
The deviation is only of a minor nature, as the proposed building windows are only encroaching 200 mm into the required set back of 1.5 metres.

- **Early detection or alarm system**

The proposed building will contain thermal detectors in the car park and a smoke detection system within the sole-occupancy units to provide early warning to the occupants.

8) **Supporting documentation**

Project No. 38754
Drawings: A01/a site plan



Appendix A (Example 2)

APPLICATION FOR MODIFICATION Accompanying information

1) Background of the proposal

A new dwelling has recently been constructed. On final inspection, it has been identified that the staircase has inconsistent riser dimensions.

2) Nature of modification

To permit the first riser of the stair (as shown on the plans) to have a height of 175mm in lieu of a consistent height of 185mm.

3) Applicable Deemed-to-Satisfy Provision

3.9.1.3 Stair construction

Relevant Performance Requirement

P2.5.1 Stairways and ramps

4) Indicate why the regulation is inappropriate

The regulation does not consider standard construction tolerances, such as variations in finished floor levels and section dimensions of solid timber treads.

5) Indicate why is it reasonable to vary the regulation

- The riser inconsistency only occurs at the first tread of the flight and is of a minor nature.
- The stairway construction consists of a main central steel stringer, with welded cleats to support the solid timber treads. The manufacturer of the steel stringer has a standard construction tolerance of plus or minus 3mm.

- The stairway manufacturer has produced a compliant pre-fabricated stairway, but has failed to allow for the slate floor covering to the ground floor slab.
- The stairway has a non-required handrail fixed on both sides of the stairway and extending past the first tread.
- The stairway is located in a domestic dwelling, where the major users of the stairway are the occupants and therefore familiar with their surroundings.
- The inconsistent riser height is to the first tread only and persons using the stairway are generally cautious of the first step.
- The treads on the stairway have a slip resistant surface close to the edge of the nosing line, to ensure that the steps are less likely to cause a slip and fall.

6) Relevant BCA Performance Requirement

P2.5.1

So that people can move safely to and within a building –

- (a) walking surfaces must have safe gradients; and*
- (b) any stair way must-*
 - (i) have suitable landings to avoid undue fatigue of users; and*
 - (ii) be suitable for safe passage in relation to the nature, volume and frequency of likely usage; and*
 - (iii) have slip resistant walking surfaces on ramps, and on stairway treads or near the edge of the nosing.*

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Comments on individual clauses of the Performance Requirement

a) N/a

b)(i) N/a

b)(ii)

- The stairway is for domestic purposes only and will not have a high volume of use.
- The stairway has handrails to both sides of the staircase, to provide stability and safe passage to users.

b)(iii)

- The steps will have a slip resistant surface close to the edge of the nosing line, to ensure that the steps are less likely to cause a slip and fall situation.

7) Issues relevant to the regulation being modified

• Class of building

The building is for domestic use only, not public use.

• Rise in storeys

The building contains two storeys and the stair way consists of a single flight with sixteen risers.

• Occupant life safety

The inconsistent riser occurs only to the first tread where the falling hazard would only present a small risk, if any.

• Extent of the deviation from the Deemed-to-Satisfy Provisions

The deviation is only of a minor nature, as the difference in riser height dimension is only 10 mm.

• Safe movement and access to and within a building

Handrails have been provided to both sides of the stairway, which also extends past the non-compliant tread.

The handrail provides for occupant stability and safe movement while using the staircase.

The treads on the stairway have a slip resistant surface placed to the edge of the nosing line, to ensure that the treads are less likely to cause a slip and fall.

8) Supporting documentation

Project No. 26894

Drawings: AO1/a floor plan & AC01/a as built stair elevation.

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