



## ***SINGLE CLASS 1 BUILDINGS AND ASSOCIATED CLASS 10 BUILDINGS***

# **SITING REQUIREMENTS IN BOROONDARA CITY COUNCIL**

This information is provided as a guide and incorporates extracts of the Building Regulations 2018.

For further information please contact Boroondara Building Surveyors on 9278 4999

Please confirm with the Town Planning Department regarding Planning Controls which may also apply to your property.

This information is only applicable for single houses and associated outbuildings on sites greater than 500m<sup>2</sup> in area

Note: Due to the complex nature of these requirements advice over the phone may not be possible and you should seek to provide drawings wherever possible to justify your proposal.

*Extract of Building Regulations 2018*

**PART 5—SITING**

**Division 1—Introduction**

**Definitions**

**"height"** in relation to—

- (a) a building (other than a wall or fence) at any point, means the vertical distance between natural ground level and the top of the roof covering; and
- (b) a wall at any point, means the vertical distance between the natural ground level at the base of the wall and the point at which the outer wall intersects the plane of the top of the roof covering or the top of the parapet, whichever is higher; and
- (c) a fence at any point, means the vertical distance between natural ground level at the base of the fence and the top of the fence;

**"pergola"** means an open structure that is unroofed but may have a covering of open weave permeable material;

**"private open space"** means—

- (a) an unroofed area of land; or
- (b) a deck, terrace, patio, balcony, pergola, verandah, gazebo or swimming pool;

**"setback"** from a boundary or building, means a horizontal distance from that boundary or building;

**"site coverage"** means that part of an allotment, which is covered by buildings, expressed as a percentage of the area of the allotment;

In this Part—

**"approved building envelope"** means documented design parameters that deal with a siting matter regulated under this Part that—

- (a) are in a planning permit for the subdivision of land 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 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
  - (ii) shown as a restriction (on a plan of subdivision 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;

"fence" includes—

- (a) a screen; or
- (b) a structure similar to a fence.

#### **68. References to planning schemes**

A reference in this Part or Schedule 5 to a planning scheme is a reference to a planning scheme made under the **Planning and Environment Act 1987** as that planning scheme is in force from time to time.

#### **69. What is an existing building?**

In this Part, a reference to an existing building (including an existing dwelling) in relation to an adjoining allotment, is a reference to any part of a building on the adjoining allotment—

- (a) that was in existence in its current form before 1 July 1994 (unless it had not been completed before that date); or
- (b) for which there is an occupancy permit that has been given to the relevant council; or
- (c) for which there is a certificate of final inspection that has been given to the relevant council (but only if that part of the building can be occupied without the need for any further certificate of final inspection); or
- (d) that has been completed (but only if that part of the building can be occupied without the need for an occupancy permit or a certificate of final inspection).

#### **70. What is a single dwelling?**

For the purposes of the definition of "single dwelling" in section 188A of the Act, a Class 1 building and a Class 10 building associated with a Class 1 building are specified classes of building.

#### **71. Exception concerning approved building envelopes**

- (1) The report and consent 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.
- (2) If an adjoining allotment is not subject to the same agreement or is not shown on the same certified plan of subdivision, sub-regulation (1) does not apply to regulations 79, 80, 81, 82, 83, 84, 90, 91, 94, 95 and 96 to the extent that they relate to that adjoining allotment.

## Division 2—Single Class 1 Buildings and Associated Class 10 Buildings

### 72. Application of Division

This Division applies to the construction of a single Class 1 building and associated Class 10a buildings on an allotment.

### 73. Maximum street setback

- (1) A new Class 1 building, other than an alteration, must not be set back from the front street alignment more than one-third of the depth of the allotment.
- (2) This regulation does not apply to an allotment equal to or greater than 0.40469ha.
- (3) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

### 74. Minimum street setbacks

- (1) If—
  - (a) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) the Schedule to that zone in the planning scheme specifies a setback from a street alignment—a building on that allotment must be set back from a street alignment not less than the relevant setback specified in respect of that street alignment in the Schedule to that zone in the planning scheme.
- (2) If sub-regulation (1) does not apply, a building must be set back from a street alignment not less than the distance specified in respect of that alignment in Table 74.

**TABLE 74—STREET SETBACKS**

<i>Adjoining development context</i>	<i>Minimum setback from front street alignment</i>	<i>Minimum setback from a side street alignment</i>
Existing dwellings on adjoining allotments facing the same street	The average distance of the setbacks of the front walls of the existing buildings on the adjoining allotments facing the front street, or 9m, whichever is the lesser	Not applicable
Existing dwelling on one adjoining allotment facing the same street and no building on the other adjoining allotment facing the same street	The same distance as the setback of the front wall of the existing building on the adjoining allotment facing the same street, or 9m, whichever is the lesser	Not applicable

No existing dwellings on adjoining allotments facing the same street	6m for a building facing a declared road 4m for a building facing any other street	Not applicable
<u>Corner allotment</u> If there is a building on the adjoining allotment facing the same street	The same distance as the setback of the front wall of the existing building on the adjoining allotment facing the front street, or 9m, whichever is the lesser	The same distance as the setback of the front wall of the existing building on the adjoining allotment facing the side street or 2m, whichever is the lesser
<u>Corner allotment</u> If there is no building on the adjoining allotment facing the same street	6m for a building facing a declared road 4m for a building facing any other street	2m

- (3) The following may encroach into the setback distance required by sub-regulation (1) or (2) by not more than 2.5m—
- porches, verandahs and pergolas that have a maximum height of less than 3.6m above natural ground level;
  - eaves, fascia and gutters;
  - sunblinds and shade sails;
  - screens referred to in regulation 84(5)(d) or 84(6); and
  - decks, steps or landings less than 800mm in height.
- (4) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design, which does not comply with this regulation.
- (5) In this regulation "**street**" does not include lane, footway, alley or right of way.
- (6) For the purposes of this regulation, an allotment does not adjoin another allotment if its boundary only touches the boundary of the other allotment at one point (for example, at a corner).

## 75. Building height

- (1) If—
- an allotment is in a zone of a planning scheme specified in Schedule 5; and
  - the Schedule to that zone in the planning scheme specifies a maximum height for buildings—

the height of a building on that allotment must not exceed the relevant height specified in the Schedule to that zone in the planning scheme.

- (2) If sub-regulation (1) does not apply, the height of a building must not exceed—
  - (a) 10m if the slope of the natural ground level at any cross section of the site of the building that is wider than 8m is 2.5° or more; and
  - (b) 9m in any other case.
- (3) If a wall is constructed in accordance with regulation 80, and despite regulation 79, any part of the building on the allotment that is within 1m of a side or rear boundary and that is adjacent to the wall must be constructed so as not to exceed the height formed by a line that connects—
  - (a) any point at the top of the wall; and
  - (b) any point at a height of 3.6m at a setback of 1m from the boundary.
- (4) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

#### **76. Site coverage**

- (1) If—
  - (a) an allotment is in a zone of a planning scheme specified in Schedule 5; and
  - (b) the Schedule to that zone in the planning scheme specifies a maximum site coverage for buildings—buildings must not occupy more of the allotment than the site coverage specified in the Schedule to that zone in the planning scheme.
- (2) If sub-regulation (1) does not apply, buildings must not occupy more than 60% of an allotment.
- (3) When calculating site coverage under sub-regulation (1) or (2), eaves, fascia and gutters not exceeding 600mm in total width, unroofed swimming pools, unroofed terraces, unroofed patios, unroofed decks and pergolas may be disregarded.
- (4) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

#### **77. Permeability**

- (1) If a building is to be constructed on an allotment, not more than 80% of the area of the allotment can be covered by impermeable surfaces.
- (2) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

#### **78. Car parking**

- (1) If a new Class 1 building is to be constructed on an allotment, provision must be made for 2 car parking spaces on the allotment that are accessible from the street.
- (2) Of the 2 car parking spaces—
  - (a) one space must be at least 6m long and 3.5m wide; and

- (b) the second space must be at least 4·9m long and 2·6m wide.
- (3) A building may project into a car parking space if it is at least 2·1m above that space.
- (4) Despite sub-regulation (2), if the 2 required car parking spaces adjoin each other in a garage or carport or in a space constrained by walls, the double space may be 5·5m in width.
- (5) An alteration to a building on an allotment must not reduce the number of car parking spaces on the allotment unless there are more than 2 in which case the number may be reduced to 2.
- (6) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

**79. Side and rear setbacks**

- (1) If—
  - (a) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) the Schedule to that zone in the planning scheme specifies minimum setbacks from side and rear boundaries—
 a building on the allotment must be set back from a side or rear boundary not less than the relevant setback specified in the Schedule to that zone in the planning scheme.
- (2) If sub-regulation (1) does not apply, a building must be set back from a side or rear boundary not less than the distance specified in respect of that boundary in Table 79.

**TABLE 79—SIDE AND REAR SETBACKS**

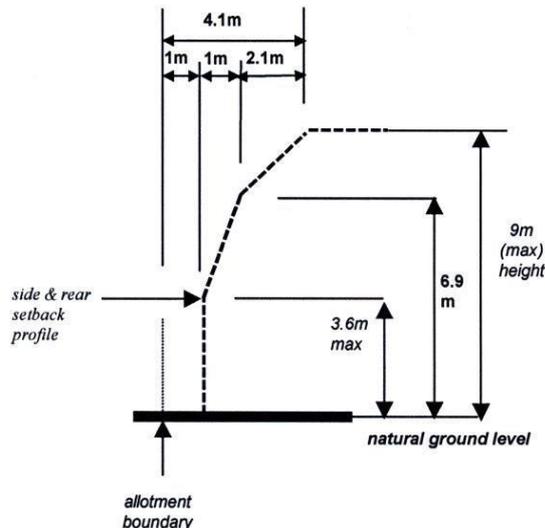
<i>Building height at any point</i>	<i>Minimum setback from side or rear boundary at that point</i>
3·6m or less	1m
More than 3·6m but not more than 6·9m	1m plus an additional distance calculated at the rate of 300mm for every metre of height over 3·6m
More than 6·9m	2m plus an additional distance calculated at the rate of 1m for every metre of height over 6·9m

- (3) The following may encroach into the setback distance required by sub-regulation (1) or (2) by not more than 500mm—
  - (a) porches and verandahs;
  - (b) masonry chimneys;
  - (c) sunblinds;
  - (d) screens referred to in regulation 84(5)(d) or 84(6);
  - (e) flues and pipes;
  - (f) domestic fuel tanks and water tanks;
  - (g) heating and cooling equipment and other services.

- (4) The following may encroach into the setback distance required by sub-regulation (1) or (2)—
- (a) landings with an area of not more than 2m<sup>2</sup> and less than 1m high;
  - (b) unroofed stairways and ramps;
  - (c) pergolas;
  - (d) shade sails;
  - (e) eaves, fascia, gutters not more than 600mm in total width;
  - (f) carports (subject to regulation 80).
- (5) This regulation does not apply to a wall that complies with regulation 80.
- (6) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

Note: The following diagram illustrates the operation of aspects of regulation 79.

**Regulation 79: Side and rear setbacks**



**80. Walls on boundaries**

- (1) This regulation applies to the construction of—
- (a) a wall on or within 200mm of a side or rear boundary of an allotment; or
  - (b) a carport constructed on or within 1m of a side or rear boundary of an allotment and which is open on the side facing the boundary or boundaries.
- (2) The length of the wall, or of the carport, or of the wall and carport or that length combined with the length of any existing wall or carport, must not exceed the greater of the following lengths—
- (a) 10m plus 25% of the remaining length of the boundary of an adjoining allotment; or
  - (b) the length of any existing wall or carport constructed on an adjoining allotment which is within 200mm of the boundary of that allotment if the proposed construction abuts the existing wall or carport.

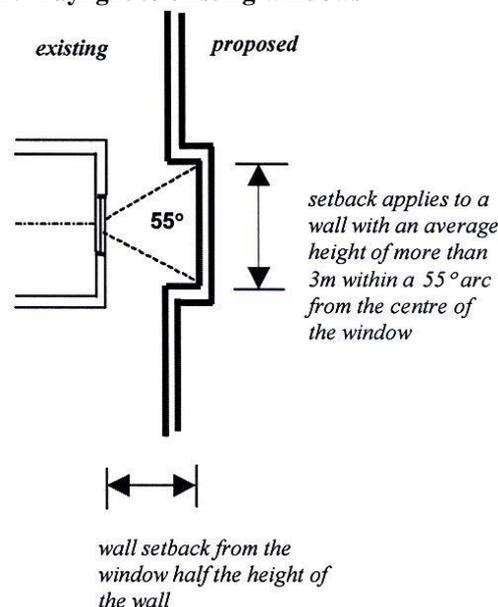
- (3) The wall or carport must not exceed—
  - (a) an average height of 3.2m; and
  - (b) a maximum height of 3.6m.
- (4) Despite sub-regulation (3), if a wall or carport abuts an existing wall or carport it may be constructed to the same height as that wall or carport.
- (5) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

### 81. Daylight to existing habitable room windows

- (1) A building must be set back from a habitable room window in an existing dwelling on an adjoining allotment to provide for a light court to the window that has a minimum area of 3m<sup>2</sup> and a minimum dimension of 1m clear to the sky.
- (2) The area of the light court required under sub-regulation (1) may include land on the adjoining allotment.
- (3) A wall or carport with an average height of more than 3m opposite a habitable room window in an existing dwelling on an adjoining allotment must be set back from that window at least half the height of the wall or carport if the wall or carport is within a 55° angle in the horizontal plane about a vertical axis through the centre of the window.
- (4) For the purposes of sub-regulation (3), the angle may be swung to not less than 35° from the plane of the wall containing the window.
- (5) If the window referred to in sub-regulation (3) is above ground floor level, then for the purposes of that sub-regulation, the wall or carport height is to be measured from the floor level of the room containing the window.
- (6) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

Note: The following diagram illustrates the operation of aspects of regulation 81(3).

#### Regulation 81: Daylight to existing windows



## 82. Solar access to existing north-facing windows

- (1) This regulation applies if—
  - (a) a building is to be constructed on an allotment; and
  - (b) a north-facing habitable room window or part of a window of an existing dwelling on an adjoining allotment is within 3m of a boundary of the allotment on which the building is to be constructed; and
  - (c) the window is orientated towards the boundary.
- (2) The proposed building must be set back from the boundary not less than the distance specified in Table 82 for a distance of 3m from each side of the window or that part of the window that is within 3m of the boundary.

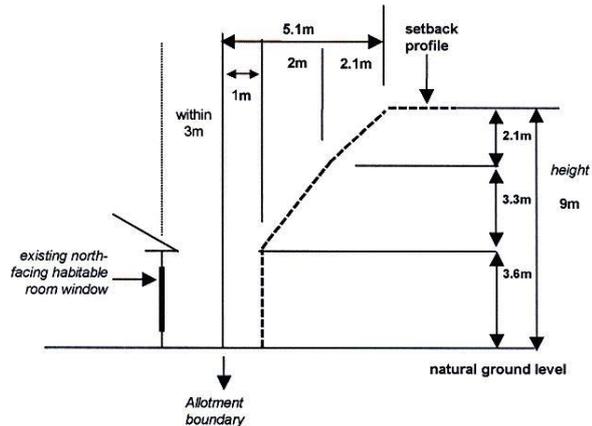
**TABLE 82—SETBACKS FROM NORTH-FACING WINDOWS**

<i>Building height at any point</i>	<i>Minimum setback from side or rear boundary at that point</i>
3·6m or less	1m
More than 3·6m but not more than 6·9m	1m plus an additional distance calculated at the rate of 600mm for every metre of height over 3·6m
More than 6·9m	3m plus an additional distance calculated at the rate of 1m for every metre of height over 6·9m

- (3) For the purposes of sub-regulation (1), a north-facing window is a window with an axis perpendicular to its surface orientated north 20° west to north 30° east.
- (4) In this regulation "**north**" means true north.
- (5) The following may encroach into the setback distance required by sub-regulation (1) or (2) by not more than 500mm and to a height not exceeding 2·5m—
  - (a) flues and pipes;
  - (b) domestic fuel tanks and water tanks;
  - (c) heating and cooling equipment and other services.
- (6) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

Note: The following diagram illustrates the operation of aspects of regulation 82.

**Regulation 82: Solar access to existing north-facing habitable room windows**



**83. Overshadowing of recreational private open space**

- (1) A building must not reduce the sunlight to a recreational private open space of an existing dwelling on an adjoining allotment to the extent that less than the required minimum area of the recreational private open space has less than 5 hours of sunlight between 9 a.m. and 3 p.m. on 22 September.
- (2) If a building is to be constructed on an allotment and the existing amount of sunlight to a recreational private open space on an adjoining allotment is less than the amount required under sub-regulation (1), the amount of sunlight to that area must not be further reduced by the construction of the building.
- (3) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.
- (4) In this regulation the required minimum area of a recreational private open space is the lesser of—
  - (a) 75% of the recreational private open space; and
  - (b) 40m<sup>2</sup> with a minimum dimension of 3m.
- (5) In this regulation "**recreational private open space**" means any part of private open space on an allotment—
  - (a) which is—
    - (i) at the side or rear of an existing dwelling on the allotment; or
    - (ii) within the front setback of an existing dwelling on the allotment and which is screened for at least 90% of its perimeter by a wall, fence or other barrier that is at least 1.5m high and that has no more than 25% of its area open; and
  - (b) which is primarily intended for outdoor recreation activities.

## 84.Overlooking

- (1) A habitable room window or raised open space of a building on an allotment must not provide a direct line of sight into a habitable room window or on to a secluded private open space of an existing dwelling on an adjoining allotment.
- (2) In the case of a direct line of sight from a habitable room window, the line of sight is any line measured from a height of 1.7m above the floor level of the habitable room and contained within the space enclosed by—
  - (a) a vertical plane measured at an angle of 45° from each side of the window; and
  - (b) a horizontal plane 1.7m above the floor level of the habitable room; and
  - (c) the ground level below; and
  - (d) a horizontal distance of 9m from the window.
- (3) In the case of a direct line of sight from a raised open space, the line of sight is any line measured from a height of 1.7m above the floor level and along the perimeter of the raised open space to any point within a horizontal distance of 9m from the raised open space and extending 45° beyond any point where the perimeter of the raised open space meets a wall of a building.
- (4) In the case of a secluded private open space, the horizontal distance of 9m referred to in sub-regulation (2)(d) or (3) is to be measured at ground level.
- (5) A habitable room window complies with this regulation if—
  - (a) in the case where a habitable room window provides a direct line of sight into a habitable room window of an existing dwelling on an adjoining allotment, it is offset a minimum of 1.5m from the edge of one window to the edge of the other; or
  - (b) it has a sill height at least 1.7m above floor level; or
  - (c) it has obscure glazing in any part of the window below 1.7m above floor level; or
  - (d) the direct line of sight is obscured by a permanent and fixed screen that has no more than 25% of its area open.
- (6) A raised open space complies with this regulation if the direct line of sight into the habitable room window or on to the secluded private open space on the adjoining allotment is obscured by a permanent and fixed screen which has no more than 25% of its area open.
- (7) A window referred to in sub-regulation (5)(c) may be able to be opened provided that when open the obscure glazing does not permit a direct line of sight on to the secluded private open space or into the habitable room window referred to in sub-regulation (1).

- (8) This regulation does not apply to a new habitable room window or raised open space that faces a property boundary if—
  - (a) there is a visual barrier at least 1.8m high at the boundary; and
  - (b) the floor level of the room or the raised open space is less than 800mm above ground level at the boundary.
- (9) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.
- (10) In this regulation—
  - "raised open space"** means a landing with an area of more than 2m<sup>2</sup>, a balcony, a terrace, a deck or a patio;
  - "secluded private open space"** means any part of private open space on an allotment—
    - (a) which is screened for at least 90% of its perimeter by a wall, fence or other barrier that is at least 1.5m high and that has no more than 25% of its area open; and
    - (b) which is primarily intended for outdoor recreation activities.

#### **85. Daylight to habitable room windows**

- (1) A habitable room window of a building on an allotment must face—
  - (a) an outdoor space or light court with a minimum area of 3m<sup>2</sup> and a minimum dimension of 1m clear to the sky, not including land on an adjoining allotment; or
  - (b) a verandah on the allotment if it is open for at least one third of its perimeter; or
  - (c) a carport on the allotment if—
    - (i) it has 2 or more sides open; and
    - (ii) it is open for at least one third of its perimeter.
- (2) For the purposes of sub-regulation (1), a side of a carport or verandah may be taken to be open if the roof covering of the carport or verandah adjacent to that side is not less than 500mm from another building on the allotment or the adjoining allotment boundary.
- (3) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

#### **86. Private open space**

- (1) If—
  - (a) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) the Schedule to that zone in the planning scheme specifies a minimum area and dimension for private open space—
 a Class 1 building on that allotment must have private open space of at least the area and dimension specified in the Schedule to that zone in the planning scheme.

- (2) If sub-regulation (1) does not apply, a Class 1 building on an allotment must have private open space of not less than 80m<sup>2</sup> or 20% of the area of the allotment, whichever is the lesser.
- (3) For the purposes of this regulation, the private open space must include an area at the side or rear of the building—
  - (a) that is at least 25m<sup>2</sup> with a minimum dimension of 3m; and
  - (b) that has convenient access from a habitable room (other than a bedroom).
- (4) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

### **Division 3—Siting of Class 10a buildings**

#### **87. Siting of Class 10a buildings**

- (1) Unless otherwise approved under the **Subdivision Act 1988** or any corresponding previous enactment, a Class 10a building must be on the same allotment as a building of another class to which it is appurtenant.
- (2) The report and consent of the relevant council must be obtained to an application for a building permit for the construction of a building that does not comply with sub-regulation (1).

### **Division 4—Class 10b Buildings**

#### **88. Application of Division**

This Division applies to the construction of Class 10b buildings on an allotment.

#### **89. Front fence height**

- (1) If—
  - (a) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) the Schedule to that zone in the planning scheme specifies a maximum height for a fence, or part of a fence, that is within 3m of the street alignment at the front of an allotment—

the height of a fence, or part of a fence, that is within 3m of the street alignment at the front of that allotment must not exceed the relevant maximum height specified in the Schedule to that zone in the planning scheme.
- (2) If sub-regulation (1) does not apply, the height of a fence, or part of a fence, that is within 3m of the street alignment at the front of that allotment must not exceed the relevant maximum height specified in Table 89.

**TABLE 89—FRONT FENCE HEIGHTS**

<i>Street type</i>	<i>Maximum fence height</i>
A declared road	2m
Any other street	1.5m

- (3) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

#### 90. Fence setbacks from side and rear boundaries

- (1) A fence exceeding 2m in height must be set back from a side or rear boundary (including a boundary that is a side or rear street alignment) not less than the distance specified in respect of that boundary in Table 90.

**TABLE 90—SIDE AND REAR SETBACKS**

<i>Fence height at any point</i>	<i>Minimum setback from side or rear boundary at that point</i>
More than 2.0m but not more than 3.6m	1m
More than 3.6m but not more than 6.9m	1m plus an additional distance calculated at the rate of 300mm for every metre of height over 3.6m
More than 6.9m	2m plus an additional distance calculated at the rate of 1m for every metre of height over 6.9m

- (2) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

#### 91. Fences on or within 150mm of side or rear boundaries

- (1) The total length of fences that are more than 2m in height and that are constructed on, or within 150mm of, a side or rear boundary of an allotment, or that total length combined with the length of any wall, or carport, or wall and carport constructed in accordance with regulation 80(2), must not exceed the greater of the following lengths—
- 10m plus 25% of the remaining length of the boundary of an adjoining allotment; or
  - the length of any wall or carport constructed on an adjoining allotment that is on or within 150mm of the boundary of that allotment and that abuts those fences.
- (2) A fence constructed on or within 150mm of a side or rear boundary of an allotment in accordance with this regulation must not exceed—
- an average height of 3m; and
  - a maximum height of 3.6m along the boundary.
- (3) Despite sub-regulation (2), if a fence abuts an existing wall it may be constructed to the same height as that wall.

- (4) This regulation does not apply to a fence if it is—
  - (a) constructed on or within 150mm of a boundary that is a side or rear street alignment; or
  - (b) provided to comply with regulation 84 or with a planning scheme that regulates the same matter as regulation 84 and—
    - (i) is not more than 2.5m in height; and
    - (ii) the part of the fence between 2.0m and 2.5m in height has between 20% and 25% of its area open.
- (5) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

## **92. Fences on street alignments**

- (1) Despite regulation 90(1), the report and consent of the relevant council must be obtained to an application for a building permit to construct a fence within 9m of a point of intersection of street alignments and exceeding a height of 1m above the footpath.
- (2) A fence adjacent to a street alignment or public open space must not contain barbed wire or other sharp protrusions unless—
  - (a) despite regulation 90(1), the fence is set back at least 150mm from the street alignment or boundary of the public open space; or
  - (b) the barbed wire or other sharp protrusion is at a height of at least 2m above the level of the street or public open space.

## **94. Fences and daylight to windows in existing dwelling**

- (1) A fence more than 2m in height must be set back from a habitable room window in an existing dwelling on an adjoining allotment to provide for a light court to the window that has a minimum area of 3m<sup>2</sup> and a minimum dimension of 1m clear to the sky.
- (2) The area of the light court required under sub-regulation (1) may include land on the adjoining allotment.
- (3) A fence with an average height of more than 3m opposite a habitable room window in an existing dwelling on an adjoining allotment must be set back from that window at least half the height of the fence if the fence is within a 55° angle in the horizontal plane about a vertical axis through the centre of the window.
- (4) For the purposes of sub-regulation (3), the angle may be swung to not less than 35° from the plane of the wall containing the window.
- (5) If the window referred to in sub-regulation (3) is above ground floor level, then for the purposes of that sub-regulation, the fence height is to be measured from the floor level of the room containing the window.
- (6) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

## 95. Fences and solar access to existing north-facing habitable room windows

- (1) This regulation applies if—
  - (a) a fence more than 2m in height is to be constructed on an allotment; and
  - (b) a north-facing habitable room window or part of a window of an existing dwelling on an adjoining allotment is within 3m of a boundary of the allotment on which the fence is to be constructed; and
  - (c) the window is orientated towards the boundary.
- (2) The proposed fence must be set back from the boundary not less than the distance specified in Table 95 for a distance of 3m from the edge of each side of the window or that part of the window that is within 3m of the boundary.

**TABLE 95—SETBACKS FROM NORTH-FACING WINDOWS**

<i>Fence height at any point</i>	<i>Minimum setback from side or rear boundary at that point</i>
3.6m or less	1m
More than 3.6m but not more than 6.9m	1m plus an additional distance calculated at the rate of 600mm for every metre of height over 3.6m
More than 6.9m	3m plus an additional distance calculated at the rate of 1m for every metre of height over 6.9m

- (3) For the purposes of sub-regulation (1), a north-facing window is a window with an axis perpendicular to its surface orientated north 20° west to north 30° east.
- (4) In this regulation "**north**" means true north.
- (5) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

## 96. Fences and overshadowing of recreational private open space

- (1) A fence more than 2m in height must not reduce the sunlight to a recreational private open space of an existing dwelling on an adjoining allotment to the extent that less than the required minimum area of the recreational private open space has less than 5 hours of sunlight between 9 a.m. and 3 p.m. on 22 September.
- (2) If a fence is to be constructed on an allotment and the existing amount of sunlight to a recreational private open space on an adjoining allotment is less than the amount required under sub-regulation (1), the amount of sunlight to that area must not be further reduced by the construction of the fence.
- (3) The report and consent of the relevant council must be obtained to an application for a building permit in relation to a design that does not comply with this regulation.

- (4) In this regulation the required minimum area of a recreational private open space is the lesser of—
- (a) 75% of the recreational private open space; and
  - (b) 40m<sup>2</sup> with a minimum dimension of 3m.
- (5) In this regulation "**recreational private open space**" means any part of private open space on an allotment—
- (a) which is—
    - (i) at the side or rear of an existing dwelling on the allotment; or
    - (ii) within the front setback of an existing dwelling on the allotment and which is screened for at least 90% of its perimeter by a wall, fence or other barrier that is at least 1.5m high and that has no more than 25% of its area open;  
and
  - (b) which is primarily intended for outdoor recreation activities.