

FENCES AND DAYLIGHT TO EXISTING HABITABLE ROOM WINDOWS IN EXISTING DWELLING

Guidelines for report and consent to vary Building Regulation 94



Legislative Provision 94

Fences and daylight to room windows in existing dwelling

- (1) A fence more than 2 m 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 3 m² 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 3 m 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 degree 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 degrees 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 which does not comply with this regulation.

Monash Guidelines

To date Minister's Guidelines have not been produced for Regulation 94. Due to the similarities between Regulation 81 and Regulation 94, Monash Council applies the Minister's Guidelines for Regulation 81 in reference to Regulation 94 applications.

The Monash guidelines for fences and daylight to existing habitable room windows are listed below. Note that a fence is considered to be a building.

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 fence appurtenant to a single dwelling, which does not comply with regulation 94 of the Building Regulations 2018, 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.

Information Required

An application to Council for report and consent for Regulation 94 must include:

- An application must be applied for via Council's portal along with payment of the application fee.
- A site plan showing all existing buildings, the location of the proposed work and details of nearby buildings on the adjoining properties.
- Elevations showing existing buildings and design for the proposed fence.
- The location and extent of the noncompliance with the regulations must be clearly shown on the plans and all relevant details and dimensions must be provided.
- A full copy of title including a plan and a copy of any covenants or agreements listed on the title.
- A written submission giving supporting reasons for the dispensation to be granted.
- A response in writing to each of the Monash Guidelines that are applicable.

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