

FENCES AND SOLAR ACCESS TO EXISTING NORTH FACING HABITABLE ROOM WINDOWS

Guidelines for report and consent to vary Building Regulation 95



Legislative Provision 95

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

- (1) This regulation applies if—
 - (a) A fence more than 2 m in height is to be constructed on an allotment; and
 - (b) north-facing habitable room window or part of a window of an existing dwelling on an adjoining allotment within 3 m 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 3 m from the edge of each side of the window or that part of the window that is within 3 m of the boundary.

TABLE 95—SETBACKS FROM NORTH-FACING WINDOWS

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

- (3) For the purposes of sub-regulation (1), a north-facing window is a window with an axis perpendicular to its surface oriented north 20 degrees west to north 30 degrees 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 which does not comply with this regulation.

Monash Guidelines

To date minister's guidelines have not been produced for Regulation 95. Due to the similarities between Regulation 82 and Regulation 95, Monash Council applies the Minister's Guidelines for Regulation 82 in reference to Regulation 95 applications.

The Monash guidelines for fences adjoining a neighbour's north facing habitable room windows are listed below. Note that a fence is considered to be a building.

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 fence appurtenant to a single dwelling, which does not comply with regulation 95 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 95 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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