

The following information is provided to assist you with completing and submitting a Report & Consent Application to Council for a request to vary this Building Regulation.

## EXTRACT OF REGULATION

### 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 1.7 m 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 1.7 m above the floor level of the habitable room; and
  - (c) the ground level below; and
  - (d) a horizontal distance of 9 m 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 1.7 m above the floor level and along the perimeter of the raised open space to any point within a horizontal distance of 9 m 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 9 m referred to in subregulation (2)(d) or (3) is to be measured from the 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 1.5 m from the edge of one window to the edge of the other; or
  - (b) it has a sill height at least 1.7 m above floor level; or
  - (c) it has obscure glazing in any part of the window below 1.7 m 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 subregulation (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 subregulation (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 1.8 m high at the boundary; and
  - (b) the floor level of the room or the raised open space is less than 800 mm above the 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 2 m<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 1.5 m high and that has no more than 25% of its area open; and
  - (b) which is primarily intended for outdoor recreation activities.

## REGULATION OBJECTIVE

The purpose of this regulation is to protect existing habitable room windows and secluded private open space on an adjoining allotment from overlooking

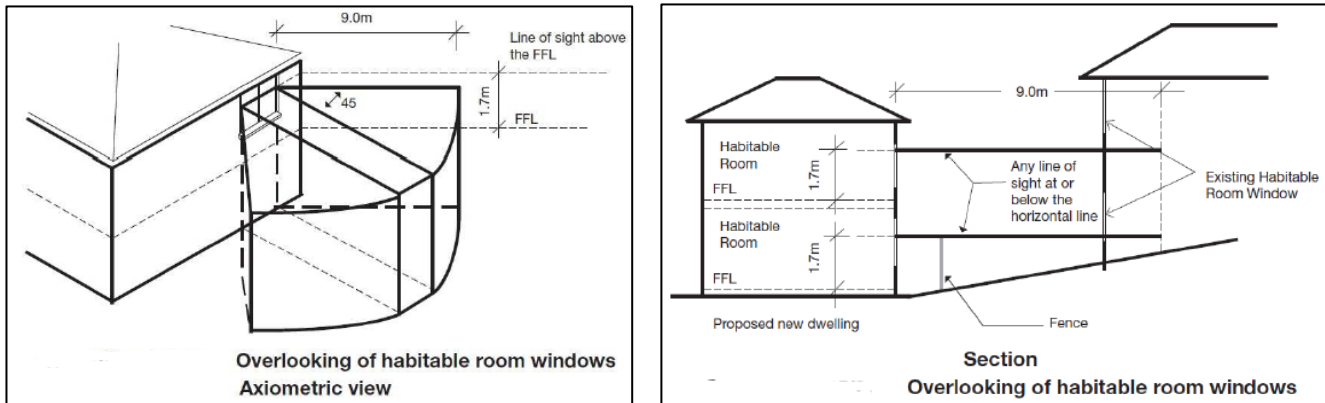
## REGULATION NOTES

It is not the role of the RBS to identify the SPOS and the area that achieves compliance. This is the responsibility of the applicant to the satisfaction of the RBS. However, it is the role of the RBS to determine the compliance of the proposed building work. Appropriate information must be provided in the application. Regulation 84(2) and (3) describe a three dimensional 'space' or envelope into which a direct line of sight should not be provided. This direct line of sight is measured 9m horizontally from 1.7m above the floor of the habitable room or raised open space.

The regulation requires a restriction to the provision of a direct line of sight into a habitable room window or onto a secluded private open space of an adjoining allotment and provides some basic, simple solutions to achieving compliance such as the use of screening or obscure glass. Designs that provide an alternative to the compliance mechanism provided by the regulation can be considered as a solution to restricting a direct line of sight. For instance a vertical 'wing' screen may prevent a direct line of sight into a habitable room window. Similarly, the use of deep reveals or window ledges may prevent a direct line of sight into a secluded private open space or habitable room window of a lower storey on the adjoining allotment. Documentation should be provided to the RBS that clearly shows the solution prevents a direct line of sight.

**Overlooking into habitable room windows**

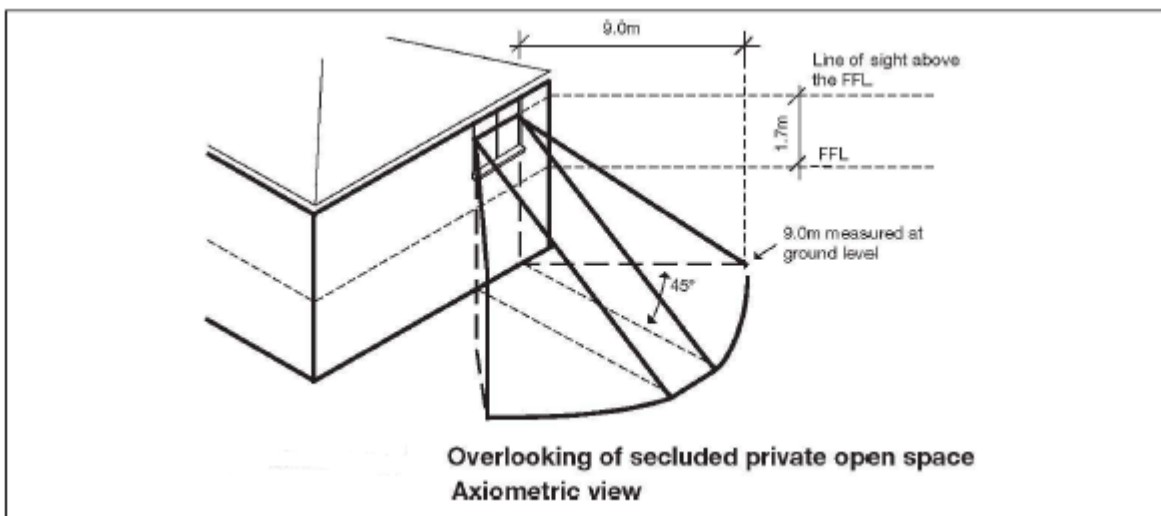
The following diagram shows a three dimensional view of the space to be considered when assessing overlooking into habitable room windows on an adjoining allotment.

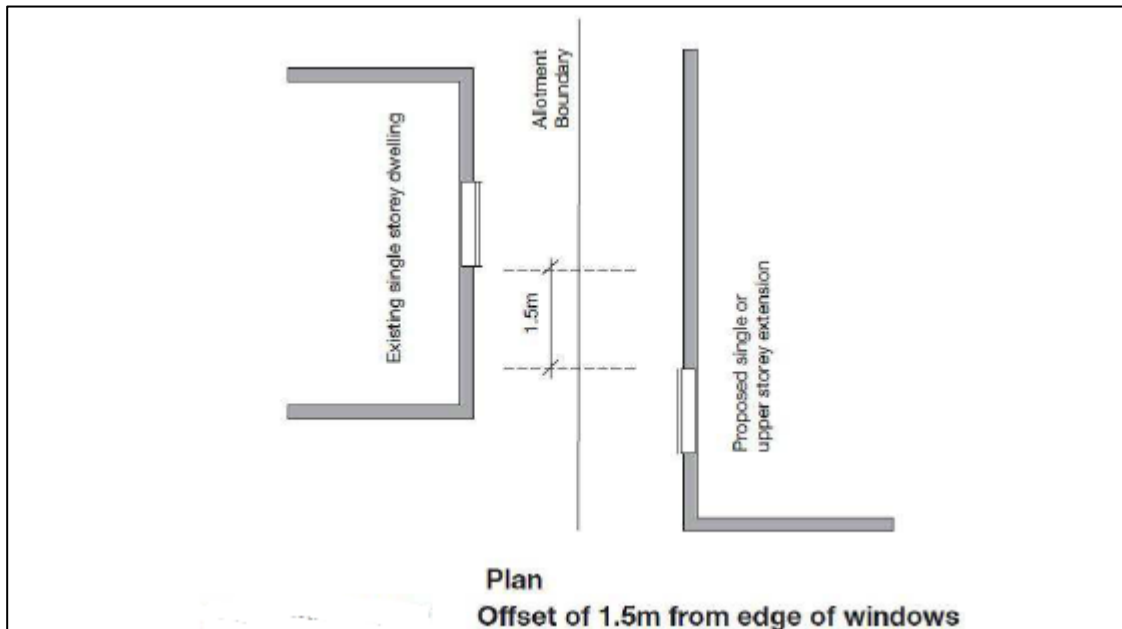
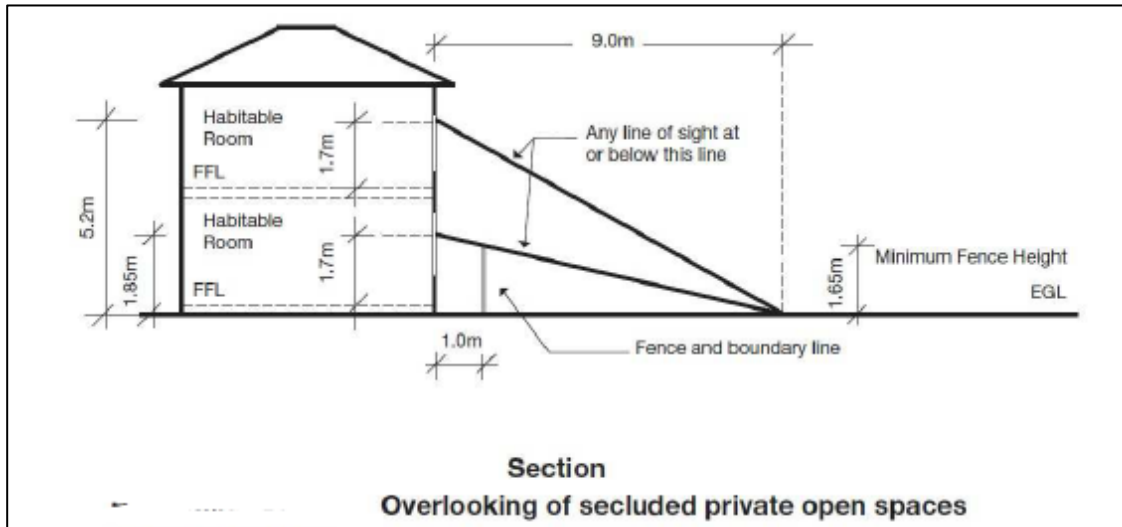


In the diagram above, there is no overlooking from the lower storey window due to the height of the fence. There is also no overlooking from the upper storey window into the upper storey window of the adjoining dwelling, however, there is overlooking from the upper storey window of the proposed dwelling into the existing lower storey habitable room window on the adjoining allotment.

**Secluded private open space**

Sub-regulation (4) limits the direct line of sight onto a secluded private open space to an area at and below a line connecting the point 1.7m above the floor level of the room or raised open space to the point at ground level measured at a horizontal distance of 9m.





**Regulation 84(8)** - This regulation provides a type of 'deemed to satisfy' provision. If a floor level and visual barrier are provided in accordance with this regulation then the remainder of regulation 83 does not apply and need not be assessed. This does not mean that the applicant must have a 1.8m high visual barrier at the boundary if the floor level is less than 800mm above the ground level at the boundary. There may well be instances where a barrier of less than 1.8m may prevent overlooking however this means that the two conditions of regulation 84(8) have not been met and the remainder of regulation 83 would apply and need to be assessed to determine compliance.

### 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 84 of the Building Regulations 2018, 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.

Your submission should outline how the proposed works meets the above guidelines. The proposal must meet at least one 'or' statement (not all will be applicable) and all 'and' statements.

Please note meeting these guidelines does not guarantee the Report & Consent will be approved.

### ASSESSMENT CRITERIA

The following criteria will be used for the assessment of your application:

- Adjoining Owners Comments
- Ability to comply with the Regulation
- How the proposal meets the Decision Guidelines

## NOTES:

### WHAT IS A REPORT & CONSENT?

As set out in the **Building Act 1993** (the Act) and the Building Regulations 2018 (the Regulations), a report and consent is the process for consulting with and obtaining the approval of a reporting authority when building work may affect assets, infrastructure or amenity of the community. These include:

- Siting of a dwelling
- Building over an easement
- Building in a flood-prone area
- Fire safety matters
- Electricity sub-stations (only a report)
- Projections beyond street alignment
- Building above or below public facilities
- Precautions over street alignment (unclear)
- Installing or altering a septic tank system.

### WHEN IS A REPORT & CONSENT REQUIRED?

The Act and Regulations provide specific circumstances where a report and consent of reporting authorities is required. Division 3 of Part 4 of the Regulations prescribes the reporting authorities and the matters to be reported on. Regulation 31 refers to Schedule 5 Part 2 which lists the matters that each authority reports on. These regulations are listed on the application form.

### DO I NEED A REPORT & CONSENT IF I HAVE A PLANNING PERMIT?

Where a Planning Application has been assessed for siting, the Planning Scheme overrides the requirement to obtain a Report & Consent. The relevant Regulation will note if this is applicable. Please note not all Planning Permits will assess the siting as this depends on what triggered the need for the Permit. Where a Planning Permit has been issued and siting was not assessed the Siting Regulations must be complied with or a Report & Consent obtained.

### CONSENTING TO AN APPLICATION

A reporting authority may consent to an application as presented or place recommendations on the consent. When placing recommendations on a report and consent the prescribed reporting authority should consider the relevance to the matter being sought the recommendation and whether the RBS can reasonably enforce the recommendation.

The Report & Consent is valid for 12 months after the date of issue. If works have not commenced within this time, Report & Consent must be reapplied for. Where works have commenced within the 12 months, the Report & Consent remains valid for those works

### REFUSAL OF AN APPLICATION

A reporting authority must provide reasons for refusing an application. When a report and consent is refused, an applicant has the right to appeal the reporting authority's decision to the Building Appeals Board (BAB).

Section 144 of the Act allows an appeal to be made against a reporting authorities:

- refusal to consent to an application
- conditions imposed
- failure within a reasonable time to decide an application.

Appeals must be made within 30 days of the date the refusal was issued. An appeal can be lodged with the BAB. An application form and supporting information is to be lodged with the relevant fee. A copy of the application form can be downloaded from the Victorian Building Authority website [www.vba.vic.gov.au](http://www.vba.vic.gov.au) or contact the BAB on (03) 9285 6400.

## REPORT & CONSENT PROCESS

