

## PART 5—SITING

### Division 1—Introduction

#### 68 Application

- (1) A regulation in this Part does not apply to the construction of a building if—
  - (a) a planning permit is required for the construction of that building; and
  - (b) the relevant planning scheme regulates the same matter as that regulation in relation to the siting of that building.
- (2) Section 188A of the Act applies to applications for building permits to which this Part applies.

**Note** - Section 11 of the Act addresses the circumstances of where there is an inconsistency between a planning scheme and a building regulation in relation to a siting matter.

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

In this Part, a reference to an *existing building* (including an *existing dwelling*) on an adjoining allotment is a reference to a building—

- (a) that was in existence in its current completed form before 1 July 1994; or
- (b) for which there is an occupancy permit, a copy of which has been given to the relevant council; or
- (c) for which there is a certificate of final inspection, a copy of which 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 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(4) of the Act, the specified classes of building are—

- (a) a Class 1 building; and
- (b) any Class 10 building associated with a Class 1 building.

#### 71 Approved building envelope design overrides siting requirement

- (1) A design in relation to a building on an allotment that does not comply with a regulation in this Part is taken to comply with that regulation if—
  - (a) an approved building envelope applies to the allotment; and
  - (b) the approved building envelope deals with the same siting matter as the regulation; and
  - (c) the design of the building is consistent with the approved building envelope in relation to that siting matter.
- (2) If an adjoining allotment is not subject to the same agreement or is not shown on the same certified plan of subdivision, subregulation (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.
- (3) In this regulation—

**agreement** has the same meaning as in paragraph (b)(i) of the definition of *approved building envelope* in regulation 5(1);

**plan of subdivision** has the same meaning as in paragraph (b)(ii) of the definition of *approved building envelope* in regulation 5(1).

### Division 2—Single Class 1 buildings and associated Class 10a 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 Class 1 building when first constructed must not be set back from the front street alignment more than one-third of the depth of the allotment unless the allotment is equal to or greater than 0.40469 ha.
- (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.
- (3) For the purposes of subregulation (1), if a building is on a battleaxe allotment—

- (a) a reference to the allotment is taken not to include a driveway that forms part of the battleaxe allotment; and
  - (b) a reference to the front street alignment is taken to be a reference to the common boundary between the battleaxe allotment and the front allotment (excluding the common boundary between any driveway that forms part of the battleaxe allotment and the front allotment).
- (4) In this regulation—
- battleaxe allotment** means—
- (a) an allotment situated behind another allotment that has a street frontage; and
  - (b) the allotment has access to the street through a driveway, whether or not the driveway forms part of the allotment;
- driveway** includes any land related and contiguous to the driveway;
- front allotment** means an allotment that has a street frontage and that is situated in front of a battleaxe allotment.

**74 Minimum street setbacks**

- (1) If—
  - (a) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) a schedule to that zone 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 for the street alignment in the schedule.
- (2) If subregulation (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 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 9 m, 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 9 m, whichever is the lesser	Not applicable
No existing dwellings on adjoining allotments facing the same street	6 m for a building facing a declared road 4 m 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 9 m, 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 2 m, whichever is the lesser
<u>Corner allotment</u> If there is no building on the adjoining allotment facing the same street	6 m for a building facing a declared road 4 m for a building facing any other street	2 m

- (3) The following may encroach into the setback distance required by subregulation (1) or (2) by not more than 2.5 m—
  - (a) porches, verandahs and pergolas that have a maximum height of less than 3.6 m above natural ground level;
  - (b) eaves, fascia and gutters;
  - (c) sunblinds and shade sails;
  - (d) permanent and fixed screens referred to in regulation 84(5)(d) or 84(6);
  - (e) decks, steps or landings less than 800 mm 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 that 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—
  - (a) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) that zone, or a schedule to that zone, specifies a maximum height for buildings—  
the height of a building on that allotment must not exceed the relevant height specified in that zone or schedule (as the case may be).
- (2) If subregulation (1) does not apply, the height of a building must not exceed—
  - (a) 10 m if the slope of the natural ground level at any cross section of the site of the building that is wider than 8 m is 2.5° or more; and
  - (b) 9 m in any other case.
- (3) If a wall is constructed in accordance with regulation 80, and despite regulation 79, any part of a building on the allotment that is within 1 m 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 3.6 m at a setback of 1 m 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 6; and
  - (b) a schedule to that zone specifies a maximum site coverage for buildings—  
buildings must not occupy more of the allotment than the site coverage specified in that schedule.
- (2) If subregulation (1) does not apply, buildings must not occupy more than 60% of an allotment.
- (3) The following items may be disregarded when calculating site coverage under subregulation (1) or (2)—
  - (a) not more than 600 mm of the width of eaves, fascia and gutters;
  - (b) unroofed swimming pools or spas, unroofed terraces, unroofed patios, unroofed decks and pergolas.
- (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) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) a schedule to that zone specifies that an allotment must have a minimum area of permeable surfaces—  
the amount of the allotment that must have a permeable surface must not be less than the minimum area of permeability specified in that schedule.
- (2) If subregulation (1) does not apply, and if a building is to be constructed on an allotment, at least 20% of the area of the allotment must have a permeable surface.
- (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.

**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 required car parking spaces—
  - (a) the first space must be at least 6 m long and 3.5 m wide; and
  - (b) the second space must be at least 4.9 m long and 2.6 m wide.
- (3) A building may project into a car parking space if it is at least 2.1 m above that space.
- (4) Despite subregulation (2), if the 2 required car parking spaces adjoin each other in a garage or carport or in a space constrained by walls, the total space may be 5.5 m 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 car parking spaces on the allotment, in which case the number of car parking spaces 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) a 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 that schedule.
- (2) If subregulation (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>
3.6 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 300 mm for every metre of height over 3.6 m
More than 6.9 m	2 m plus an additional distance calculated at the rate of 1 m for every metre of height over 6.9 m

- (3) The following may encroach into the setback distance required by subregulation (1) or (2)—
  - (a) landings with an area of not more than 2 m<sup>2</sup> and less than 1 m in height;
  - (b) unroofed stairways and ramps;
  - (c) pergolas;
  - (d) shade sails;
  - (e) eaves, fascia and gutters, if the encroachment is not more than 600 mm;
  - (f) carports that comply with regulation 80.
- (4) The following may encroach into the setback distance required by subregulation (1) or (2) by not more than 500 mm—
  - (a) porches and verandas;
  - (b) masonry chimneys;
  - (c) sunblinds;
  - (d) permanent and fixed screens referred to in regulation 84(5)(d) or (6);
  - (e) flues, pipes and rainwater heads;
  - (f) domestic fuel tanks and water tanks;
  - (g) heating and cooling equipment and other services.
- (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.

**80 Walls and carports on boundaries**

- (1) This regulation applies to the construction of—
  - (a) a wall of a building constructed on or within 200 mm of a side or rear boundary of an allotment; or
  - (b) a carport constructed on or within 1 m of a side or rear boundary of an allotment and which is open on the side facing the boundary or boundaries.
- (2) If—
  - (a) an allotment is in a zone of a planning scheme specified in Schedule 6; and
  - (b) a schedule to that zone specifies the maximum length of the wall, or of the carport, or of the wall and carport, or the maximum of any of those lengths combined with the length of any existing wall or carport—
 

that length must not exceed any such maximum length specified in that schedule.
- (3) If subregulation (2) does not apply, the length of the wall, or of the carport, or of the wall and carport, or any of those lengths combined with the length of any existing wall or carport, must not exceed the greater of the following—

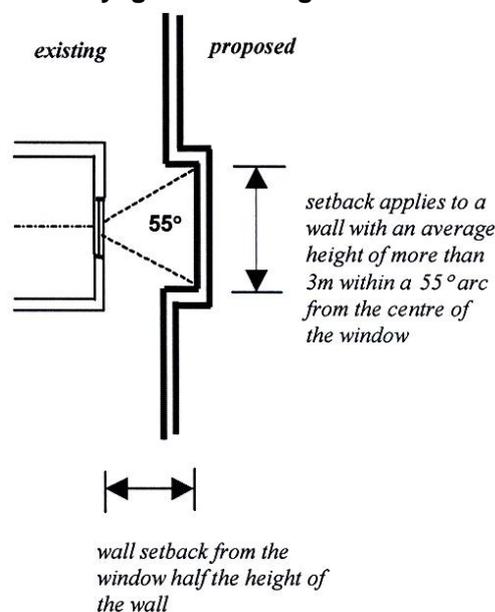
- (a) the length of any existing wall or carport constructed on an adjoining allotment, which is within 200 mm of the boundary of that allotment, if the proposed construction abuts the existing wall or carport;
  - (b) 10 m plus 25% of the remaining length of the boundary of the adjoining allotment, in any other case.
- (4) The wall or carport must not exceed—
- (a) an average height of 3.2 m where the average is calculated after excluding any length that is less than 2 m in height; and
  - (b) a maximum height of 3.6 m.
- (5) Despite subregulation (4), if the wall or carport abuts an existing wall or carport it may be constructed to the same height as that wall or carport.
- (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.

**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 3 m<sup>2</sup> and a minimum dimension of 1 m clear to the sky.
- (2) The area of the light court required under subregulation (1) may include land on the adjoining allotment.
- (3) A wall or carport 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 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 subregulation (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 subregulation (3) is above ground floor level, then for the purposes of that subregulation, 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 habitable room windows**



**82 Solar access to existing north-facing habitable room 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—
    - (i) within 3 m of a boundary of the allotment on which the building is to be constructed; and
    - (ii) oriented towards the boundary; and
    - (iii) will be situated below the eaves or the top of a parapet of the building being constructed.
- (2) The proposed building must be set back from the boundary not less than the distance specified in Table 82 for a distance of 3 m from each side of the window or that part of the window that is within 3 m of the boundary.

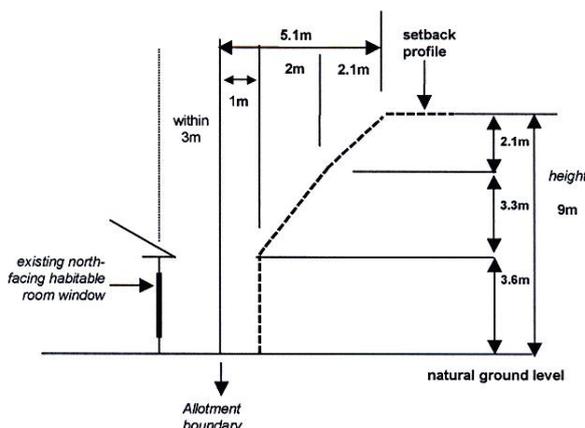
**Table 82—Setbacks from north-facing habitable room windows**

<i>Building height at any point</i>	<i>Minimum setback from side or rear boundary at that point</i>
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) The following may encroach into the setback distance required by subregulation (2) by not more than 500 mm and to a height not exceeding 2.5 m—
  - (a) flues and pipes;
  - (b) domestic fuel tanks and water tanks;
  - (c) heating and cooling equipment and other services.
- (4) A rainwater head may encroach into the setback distance required by subregulation (2) by not more than 500 mm.
- (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.

**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 subregulation (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) 40 m<sup>2</sup> with a minimum dimension of 3 m.

**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.

**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 3 m<sup>2</sup> and a minimum dimension of 1 m clear to the sky, not including land on an adjoining allotment; or
  - (b) a verandah, porch, deck or balcony 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 subregulation (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 500 mm 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) a 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 that schedule.
- (2) If subregulation (1) does not apply, a Class 1 building on an allotment must have private open space—
  - (a) of not less than 80 m<sup>2</sup> or 20% of the area of the allotment, whichever is the lesser; and
  - (b) which includes an area at the side or rear of the building—
    - (i) that is at least 25 m<sup>2</sup> with a minimum dimension of 3 m; and
    - (ii) that has convenient access from a habitable room (other than a bedroom).
- (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.

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

**87 Siting of Class 10a buildings**

- (1) A Class 10a building that is appurtenant to a building of another class must be on the same allotment as the building of the other class unless the Class 10a building is approved under the **Subdivision Act 1988** or any corresponding previous enactments.
- (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 this regulation.

**Division 4—Class 10b structures**

**88 Application of Division**

This Division applies to the construction of Class 10b structures 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) a schedule to that zone specifies a maximum height for a fence, or part of a fence, that is within 3 m of the street alignment at the front of an allotment—
    - the height of a fence, or part of a fence, that is within 3 m of the street alignment at the front of that allotment must not exceed the relevant maximum height specified in that schedule.
- (2) If subregulation (1) does not apply, the height of a fence, or part of a fence, that is within 3 m of the street alignment at the front of an 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	2 m
Any other street	1.5 m

- (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 2 m in height must be set back from a side or rear boundary of an allotment (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 2.0 m but not more than 3.6 m	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 300 mm for every metre of height over 3.6 m
More than 6.9 m	2 m plus an additional distance calculated at the rate of 1 m for every metre of height over 6.9 m

- (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 150 mm of side or rear boundaries**

- (1) Despite regulation 90, one or more fences that are more than 2 m in height may be constructed on, or within 150 mm of, a side or rear boundary of an allotment (other than a boundary that is a side or rear street alignment) if the total length of the fence or fences or that total length combined with the length of any wall, or carport, or wall and carport constructed in accordance with either regulation 80(2) or (3) (as the case requires) on or adjacent to that boundary, does not exceed the greater of the following lengths—
- 10 m plus 25% of the remaining length of the boundary of an adjoining allotment;
  - the length of any wall or carport constructed on an adjoining allotment that is on or within 150 mm of the boundary of that allotment and that abuts those fences.
- (2) A fence constructed on or within 150 mm of a side or rear boundary of an allotment in accordance with this regulation must not exceed—
- an average height of 3 m; and
  - a maximum height of 3.6 m along the boundary.
- (3) Despite subregulation (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 the fence is provided to comply with regulation 84, or with a planning scheme that regulates the same matter as regulation 84, and—
- the fence is not more than 2.5 m in height; and
  - the part of the fence between 2.0 m and 2.5 m 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 intersecting street alignments**

- (1) Despite regulation 90(1), a fence exceeding a height of 1 m above the footpath must be set back from the point of intersection of street alignments by at least 9 m.
- (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.
- (3) In this regulation **street** does not include lane, footway, alley or right of way.

**93 Fences must not include barbed wire**

- (1) A fence adjacent to a street alignment or public open space must not contain barbed wire or other sharp protrusions unless—
- despite regulation 90(1), the fence is set back at least 150 mm from the street alignment or boundary of the public open space; or
  - the barbed wire or other sharp protrusion is at a height of at least 2 m above the level of the street or public open space; or
  - the fence is on an allotment that has an area of 2000 m<sup>2</sup> or more and is used principally for raising livestock.
- (2) In this regulation, **public open space** has the same meaning as in section 3(1) of the **Subdivision Act 1988**.

**94 Fences and daylight to habitable 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 m<sup>2</sup> and a minimum dimension of 1 m clear to the sky.
- (2) The area of the light court required under subregulation (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° angle in the horizontal plane about a vertical axis through the centre of the window.
- (4) For the purposes of subregulation (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 subregulation (3) is above ground floor level, then for the purposes of that subregulation, 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 2 m 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—
    - (i) within 3 m of a boundary of the allotment on which the fence is to be constructed; and
    - (ii) oriented towards the boundary; and
    - (iii) situated below the height of the fence being constructed.
- (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 habitable room windows**

<i>Fence height at any point</i>	<i>Minimum setback from side or rear boundary at that point</i>
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) 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 2 m 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 subregulation (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) 40 m<sup>2</sup> with a minimum dimension of 3 m.

**97 Masts, poles etc.**

- (1) A mast, pole, aerial, antenna, chimney, flue or service pipe—
  - (a) when attached to a building, must not exceed a height of 3 m above the highest point of the roof of the building; or
  - (b) when not attached to a building, must not exceed 8 m above the ground level.
- (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.

**Part 6—Projections beyond street alignment**

**98 Projections beyond street alignment**

Except where otherwise provided in this Part, a building must not project beyond the street alignment.

**99 Architectural features—narrow street**

- (1) An architectural feature of a building on a narrow street must not project beyond the street alignment.
- (2) Despite subregulation (1), an architectural feature may project beyond a narrow street no more than 240 mm horizontally beyond the street alignment and at a height of at least 2.7 m above the level of the street if—
  - (a) any footpath or kerb forming part of the street is not more than 240 mm in height above the street level; and
  - (b) the architectural feature is constructed from non-combustible material.

**100 Architectural features—medium street**

An architectural feature of a building on a medium street must not project beyond the street alignment unless the architectural feature—

- (a) projects no more than 600 mm horizontally beyond the street alignment; and
- (b) is at least—
  - (i) 5 m in height above any part of the street that may be used by a motor vehicle; or
  - (ii) 2.7 m in height above the level of the street in any other case; and
- (c) is constructed from non-combustible material.

**101 Architectural features—wide street**

An architectural feature of a building on a wide street must not project beyond the street alignment unless the architectural feature—

- (a) projects no more than 1.2 m horizontally beyond the street alignment; and
- (b) is at least—
  - (i) 5 m in height above any part of the street that may be used by a motor vehicle; or
  - (ii) 2.7 m in height above the level of the street in any other case; and
- (c) is constructed from non-combustible material.

**102 Windows and balconies**

- (1) A window or balcony must not project beyond the street alignment—
  - (a) of a narrow street; or
  - (b) of a medium street.
- (2) A window or balcony must not project beyond the street alignment of a wide street—
  - (a) more than 1 m horizontally; and
  - (b) at a height less than—
    - (i) 5 m above any part of the street that may be used by a motor vehicle; or
    - (ii) 3 m above the level of the street in any other case; and
  - (c) within 1.2 m of the side boundary of an adjoining allotment.

**103 Verandahs**

A verandah must not project beyond the street alignment unless the verandah—

- (a) is set back at least 750 mm from the kerb; and
- (b) is at a height of at least 3 m above the level of the street.

**104 Sunblinds and awnings**

A sunblind or awning must not project beyond the street alignment—

- (a) more than 2.4 m horizontally; and
- (b) at any height less than—
  - (i) 5 m above any part of the street that may be used by a motor vehicle; or
  - (ii) 2.4 m above the level of the street in any other case.

**105 Service pipes, rainwater heads and service installations**

A service pipe, rainwater head or service installation must not project beyond the street alignment—

- (a) more than 200 mm horizontally in the case of a service pipe; and
- (b) more than 300 mm horizontally in the case of a rainwater head or service installation; and
- (c) at any height less than 2.7 m above the level of the street.

**106 Window shutters**

Window shutters may project horizontally not more than 50 mm beyond the street alignment when in the fully open position.

**107 Signs**

A sign or similar Class 10b structure must not project beyond the street alignment unless the sign or structure—

- (a) is set back at least 750 mm from the kerb; and
- (b) is at a height of at least 2.7 m above the level of the street.

**108 Service cabinet doors**

- (1) A service cabinet door must not project beyond the street alignment more than 600 mm when in the fully open position.
- (2) In this regulation, **service cabinet** means a cabinet or cupboard containing a meter, electrical equipment, water connections, fire equipment or other similar equipment.

**109 Report and consent required**

- (1) The report and consent of the relevant council must be obtained to an application for a building permit to construct any of the following parts of a building if the part projects beyond the street alignment at a different height or distance to that specified in this Part—
  - (a) an architectural feature;
  - (b) a window;
  - (c) a balcony;
  - (d) a verandah;
  - (e) a sunblind;
  - (f) an awning;
  - (g) a service pipe;
  - (h) a rainwater head;
  - (i) a service installation;
  - (j) a window shutter;
  - (k) a sign or similar Class 10b structure;
  - (l) a service cabinet door.
- (2) The report and consent of the relevant council must be obtained to an application for a building permit to construct a building if any part of the building not specified in subregulation (1) would project beyond the street alignment.
- (3) The relevant council may give its consent under subregulation (1) or (2) if it considers that the projection of the part of the building beyond the street alignment will not be detrimental to the safety of the public.
- (4) Despite subregulations (1) and (2), the report and consent of the relevant council under subregulation (1) or (2) need not be obtained to an application for a building permit if—
  - (a) a planning permit is required for the construction of the building; and
  - (b) the relevant planning scheme regulates the projection of part of a building beyond the street alignment of the same class of part of building referred to in subregulation (3).

**110 Footings adjoining boundaries are permissible**

- (1) A footing may support a party wall.
- (2) A footing may extend beyond the boundaries of a street alignment—
  - (a) to a distance of not more than 300 mm if the highest projecting part of the footing is at a depth of at least 450 mm but less than 3 m below the level of the street; or
  - (b) to a distance of not more than 1 m if the highest projecting part of the footing is at a depth of at least 3 m below the level of the street.

**Part 8—Building work  
Division 2 –Special Provisions**

**130 Report and consent for building over easements**

- (1) The report and consent of the relevant service authority must be obtained to an application for a building permit to construct a building over an easement vested in that service authority.
- (2) This regulation does not apply to implied easements under the **Subdivision Act 1988**.

**134 Buildings above or below certain public facilities**

- (1) This regulation does not apply to a part of a building to which Part 6 applies.
- (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 above or below a street, railway, bus terminal or similar public facility whether or not such a building is connected to other buildings.

**Part 9 – Building Work – Safety Requirements  
Division 10 – Designation of Special Areas for Building Work**

**153 Report and consent for building in areas liable to flooding**

- (1) This regulation does not apply to—
  - (a) a Class 10 building; or
  - (b) an unenclosed floor area of a building; or
  - (c) an alteration to an existing building if the area of the existing building is not increased by more than 20 m<sup>2</sup>.
- (2) The report and consent of the relevant council must be obtained to an application for a building permit if the site is on an allotment that is in an area liable to flooding.
- (3) The report and consent of the relevant council under subregulation (2) need not be obtained to an application for a building permit if—
  - (a) a planning permit is required for the construction of the building; and
  - (b) the relevant planning scheme regulates the level of the lowest floor of the building in relation to any flood level declared under the **Water Act 1989** or otherwise determined by the floodplain management authority or the relevant council.
- (4) The relevant council must not give its consent under subregulation (2) if it is of the opinion that there is likely to be a danger to the life, health or safety of the occupants of the building due to flooding of the site.
- (5) In its report under subregulation (2) the relevant council may specify a level for the surface of the lowest floor of a building on the site.
- (6) Before specifying a floor level under subregulation (5) the relevant council must—
  - (a) consult with the floodplain management authority for that site; and
  - (b) specify a level at least 300 mm above any flood levels declared under the **Water Act 1989** or otherwise determined by the floodplain management authority, unless the floodplain management authority consents to a lower floor level.
- (7) The relevant council must without delay advise the floodplain management authority and the sewerage authority for that site of the floor level (if any) specified under subregulation (5).

**154 Report and consent for construction on designated land or designated works**

- (1) The report and consent of the relevant council must be obtained for an application for a building permit for the construction of a building on designated land or designated works.
- (2) The report and consent of the relevant council under subregulation (1) may include recommendations controlling the location and construction of retaining walls and fences in relation to designated land or designated works.
- (3) Before giving its consent under subregulation (1), the relevant council must consult with the waterway management authority for the designated land or designated works.
- (4) The report and consent of the council need not be obtained to an application for a building permit referred to in subregulation (1) if the consent of the relevant waterway management authority has been obtained as a requirement of a planning permit for the construction of the building.
- (5) In this regulation—  
**waterway management authority** in relation to designated land or designated works means the Authority to which Division 2 of Part 10 of the **Water Act 1989** applies that has the waterway management district (within the meaning of that Act) which contains the designated land or designated works.