

FENCES AND OVERSHADOWING OF RECREATIONAL PRIVATE OPEN SPACE

Guidelines for report and consent to vary Building Regulation 96



Legislative Provision 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 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 which 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 m² with a minimum dimension of 3 m.
- (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 1.5 m high and that has no more than 25% of its area open; and
 - (b) which is primarily intended for outdoor recreation activities.

Monash Guidelines

To date Minister's Guidelines have not been produced for Regulation 96. Due to the similarities between Regulation 83 and Regulation 96, Monash Council applies the Minister's Guidelines for Regulation 83 in reference to Regulation 96 applications.

The Monash Guidelines for fences and overshadowing of recreational private open space are listed below. Note that a fence is considered to be a building.

Objective

To ensure buildings do not unreasonably overshadow existing secluded private open spaces.

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 83 of the Building Interim Regulations 2018, if –

- (a) the proposed building will not significantly impact on the amenity of the secluded private open space(s) 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 83 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.
- Shadow diagrams for 9 am, 10 am, 2 pm and 3 pm on 22 September.
- The location and extent of the non compliance 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.

BLD0265 - Last Updated - 01/02/2021