

Building (Single Dwellings) Regulations 2001

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S.R. No. 171/2001
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Building Act 1993

Building (Single Dwellings) Regulations 2001

The Governor in Council makes the following Regulations:

Dated: 18 December 2001

Responsible Minister:

JOHN THWAITES

Minister for Planning

HELEN DOYE

Clerk of the Executive Council

1. Objective

The objective of these Regulations is to amend the Building Regulations 1994^[1]



--

(a) to prescribe requirements for the siting and design of single dwellings and associated buildings; and

(b) to make general improvements to the operation of those Regulations.

2. Authorising provisions

These Regulations are made under sections 7, 9, 261, 262 and Part 1 of Schedule 1 of the **Building Act 1993**.

3. Commencement

These Regulations come into operation on 23 December 2001.

4. Information to accompany applications

In regulation 2.1(2)(c) of the Building Regulations 1994--

(a) after sub-paragraph (vi) **insert--**

"(vii) the location, dimensions and area of impermeable surfaces covering the allotment if necessary for the purposes of regulation 4.12; and (viii) the

location and dimensions of car parking spaces for the purposes of regulation 4.13; and
(ix) the location, dimensions and area of private open space for the purposes of regulation 4.21; and".

5. Reporting authorities

In Table 2.2 of regulation 2.2(1) of the Building Regulations 1994, for the item relating to Council **substitute--**

"Council Building over an easement	reg. 2.4(1)
Projections beyond street alignment	reg. 3.12
Buildings above or below certain public facilities	reg. 3.15
Setback from a street boundary not complying with reg. 4.8	reg. 4.8(3)
Setback from a street boundary not complying with reg. 4.9	reg. 4.9(4)
Building height not complying with reg. 4.10	reg. 4.10(4)
Site coverage not complying with reg. 4.11	reg. 4.11(4)
Impermeable surfaces covering more than 80% of an allotment area	reg. 4.12(2)
Car parking spaces not complying with reg. 4.13	reg. 4.13(6)
Side or rear boundary setbacks not complying with reg. 4.14	reg. 4.14(6)
Walls or carports not complying with reg. 4.15	reg. 4.15(5)
Building setbacks not complying with reg. 4.16 (daylight to existing habitable room window)	reg. 4.16(6)

Building setbacks not complying with reg. 4.17 (solar access)	reg. 4.17(6)
Building design not complying with reg. 4.18 (overshadowing of recreational private open space)	reg. 4.18(3)
Window or raised open space not complying with reg. 4.19 (overlooking)	reg. 4.19(9)
Building design not complying with reg. 4.20 (daylight to habitable room window)	reg. 4.20(3)
Private open space not complying with reg. 4.21	reg. 4.21(4)
Siting of appurtenant Class 10 buildings	reg. 4.22(2)
Front fence height not complying with reg. 4.24	reg. 4.24(3)
Fence setback on side or rear boundary not complying with reg. 4.25	reg. 4.25(3)
Length or height of side or rear boundary fence not complying with reg. 4.26	reg. 4.26(5)
A fence within 9m of an intersection	reg. 4.27(1)
Fence setback not complying with reg. 4.28 (daylight to existing habitable room window)	reg. 4.28(6)
Fence setback not complying with reg. 4.29 (solar access)	reg. 4.29(5)
Fence design not complying with reg. 4.30 (overshadowing of recreational private open space)	reg. 4.30(3)

Mast, pole, aerial, antenna, chimney flue pipe or other service pipe reg. 4.31

Precautions over a street reg. 5.3(4)

Point of discharge of storm water reg. 5.9(2)

Installation of soil and waste disposal reticulation system in unsewered area or construction of a building over an existing reticulation system in an unsewered area reg. 6.1

Construction of buildings on land liable to flooding reg. 6.2(3)

Building on designated land reg. 6.6(2)".

6. New regulation 2.5 substituted

For regulation 2.5 of the Building Regulations 1994 **substitute--**
"2.5 Time limits

The following time limits apply in relation to applications for building permits-

<i>Matter</i>	<i>Act provision</i>	<i>Class 1 or 10 buildings</i>	<i>Class 2-9 buildings</i>
Relevant building surveyor to give reporting authority a copy of an application	Schedule 2 clause 4(2)	3 business days	5 business days
Time after receipt of copy of application for reporting authority to report on or consent to application	Schedule 2 clause 6	5 business days	10 business days
Time after receipt of copy of application for reporting authority to report on or consent to an application for a matter under Division 2 and regulation 4.24 of Part 4	Schedule 2 clause 6	15 business days	Not applicable

<i>Matter</i>	<i>Act provision</i>	<i>Class 1 or 10 buildings</i>	<i>Class 2-9 buildings</i>
Time after receipt of copy of application for responsible authority to report on or consent to application	Schedule 2 clause 6A	15 business days	15 business days

Time for relevant building surveyor to decide application after all reporting authority consents or reports are received or the end of the relevant time prescribed for the supply of those consents or reports whichever is the earlier

section 19	10 business days	15 business days
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<i>Matter</i>	<i>Act provision</i>	<i>Class 1 or 10 buildings</i>	<i>Class 2-9 buildings</i>
Further time for applicant to supply a report or consent of a reporting authority to relevant building surveyor	Schedule 2 clause 5(4)	3 calendar months	6 calendar months

7. New Part 4 substituted

For Part 4 of the Building Regulations 1994 **substitute--**

'PART 4--SITING

Division 1--Introductory Matters

4.1 Definitions

In this Part--

"clear to the sky" means an unroofed area or an area roofed with a material that transmits at least 90% of light; **"height"** in relation to--

- (a) a building (other than a wall or fence) at any point, means the vertical distance between natural ground level and the top of the roof covering; and
- (b) a wall at any point, means the vertical distance between the natural ground level at the base of the wall and the point at which the outer wall intersects the plane of the top of the roof covering or the top of the parapet, whichever is higher; and

(c) a fence at any point, means the vertical distance between natural ground level at the base of the fence and the top of the fence;

"private open space" means--

(a) an unroofed area of land; or

(b) a deck, terrace, patio, balcony, pergola, verandah, gazebo or swimming pool;

"setback" from a boundary or building, means a horizontal distance from that boundary or building;

"site coverage" means that part of an allotment which is covered by buildings, expressed as a percentage of the area of the allotment;

"window" includes roof skylight, glass panel, glass brick, glass louvre, glazed sash, glazed door, translucent sheeting and any other building material which transmits natural light directly from outside a building into a room.

4.2 Application of this Part

(1) This Part is subject to section 11 of the Act.

(2) A regulation in this Part does not apply to the construction of a building if a planning permit is required for the construction of that building and the relevant planning scheme regulates the same matter as that regulation in relation to the siting of that building.

(3) Except for construction which is an alteration, regulations 4.18 and 4.19 do not apply to the construction of a new building on land--

(a) if the land is within one of the following municipal districts--

(i) City of Casey;

(ii) City of Whittlesea;

(iii) City of Wyndham;

(iv) City of Hume;

(v) Shire of Cardinia;

(vi) Shire of Melton; and

(b) the land is on a plan of subdivision which was registered on or after 1 January 1997 and before 1 January 2003; and

(c) a building permit for the construction of the building is issued before 1 January 2003.

4.3 References to planning schemes

A reference in this Part or Schedule 3 to a planning scheme is a reference to a planning scheme made under the **Planning and Environment Act 1987** as that planning scheme is amended and in force from time to time.

4.4 What is an existing building?

In this Part, a reference to an existing building in relation to an adjoining allotment is a reference to any part of a building on the adjoining allotment--

(a) that was in existence in its current form before 1 July 1994 (unless it had not been completed before that date); or

(b) for which there is an occupancy permit that has been given to the relevant council; or

(c) for which there is a certificate of final inspection that 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 that part of the building can be occupied without the need for an occupancy permit or a certificate of final inspection).

4.5 What is a single dwelling?

For the purposes of the definition of "single dwelling" in section 188A of the Act, a Class 1 building and a Class 10 building associated with a Class 1 building are specified classes of building.

4.6 Application of section 188A of the Act

Section 188A of the Act applies to applications for building permits to which this Part applies.

Division 2--Single Class 1 Buildings and Associated Class 10 Buildings

4.7 Application of Division

This Division applies to the construction of a single Class 1 building and associated Class 10a buildings on an allotment.

4.8 Maximum street setback

(1) A new Class 1 building, other than an alteration, must not be set back from the front street boundary more than one-third of the depth of the allotment.

(2) This regulation does not apply to an allotment equal to or greater than 0.40469ha.

(3) The consent and report 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.

4.9 Minimum street setbacks

(1) If--

- (a) an allotment is in a zone of a planning scheme specified in Schedule 3; and
- (b) the Schedule to that zone in the planning scheme specifies a setback from a street boundary--

a building on that allotment must be set back from a street boundary not less than the relevant setback specified in respect of that street boundary in the Schedule to that zone in the planning scheme.

(2) If sub-regulation (1) does not apply, a building must be set back from a street boundary not less than the distance specified in respect of that boundary in Table 4.9.

TABLE 4.9--STREET SETBACKS

<i>Adjoining Development Context</i>	<i>Minimum setback from front street</i>	<i>Minimum setback from a side street</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 9m, 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 9m, whichever is the lesser	Not applicable

No existing dwellings on adjoining allotments facing the same street	6m for a building facing a declared road 4m for a building facing any other street	Not applicable
<i>Adjoining Development Context</i>	<i>Minimum setback from front street</i>	<i>Minimum setback from a side street</i>
Corner allotment 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 9m, 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 2m, whichever is the lesser
Corner allotment If there is no building on the adjoining allotment facing the same street	6m for a building facing a declared road 4m for a building facing any other street	2m

(3) The following may encroach into the setback distance required by sub-regulation (1) or (2) by not more than 2.5m--

- (a) porches, verandahs and pergolas that have a maximum height of less than 3.6m above natural ground level;
- (b) eaves, fascia and gutters;
- (c) sunblinds and shade sails;
- (d) screens referred to in regulation 4.19(4)(d) or 4.19(5); and
- (e) decks, steps or landings less than 800mm in height.

(4) The consent and report 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.

(5) In this regulation "**declared road**" means a declared road within the meaning of the **Transport Act 1983**.

(6) In this regulation "**street**" means any road other than a lane, footway, alley or right of way.

(7) 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).

4.10 Building height

(1) If--

- (a) an allotment is in a zone of a planning scheme specified in Schedule 3; and
- (b) the Schedule to that zone in the planning scheme specifies a maximum height for buildings--

the height of a building on that allotment must not exceed the relevant height specified in the Schedule to that zone in the planning scheme.

(2) If sub-regulation (1) does not apply, the height of a building must not exceed--

(a) 10m if the slope of the natural ground level at any cross section wider than 8m of the site of the building is 2.5° or more; and

(b) 9m in any other case.

(3) In addition to the limits imposed by sub-regulation (2), and despite regulation 4.14, a part of a building that is within 1m of a side or rear boundary that is adjacent to a wall complying with regulation 4.15--

(a) must be constructed so as to form an angle not exceeding 30° from a line that is perpendicular to the plane of the wall; and (b) must not exceed a height of 3.6m at a setback of 1m from the boundary.

(4) The consent and report 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.

4.11 Site coverage

(1) If--

(a) an allotment is in a zone of a planning scheme specified in Schedule 3; and

(b) the Schedule to that zone in the planning scheme specifies a maximum site coverage for buildings--

buildings must not occupy more of the allotment than the site coverage specified in the Schedule to that zone in the planning scheme.

(2) If sub-regulation (1) does not apply, buildings must not occupy more than 60% of an allotment.

(3) When calculating site coverage under sub-regulation (1) or (2), eaves, fascia and gutters not exceeding 600mm in total width, unroofed swimming pools, unroofed terraces, unroofed patios, unroofed decks and pergolas may be disregarded.

(4) The consent and report 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.

4.12 Permeability

(1) If a building is to be constructed on an allotment, not more than 80% of the area of the allotment can be covered by impermeable surfaces.

(2) The consent and report 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.

4.13 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.

(2) Of the 2 car parking spaces--

(a) one space must be at least 6m long and 3.5m wide; and

(b) the second space must be at least 4.9m long and 2.6m wide.

(3) A building may project into a car parking space if it is at least 2.1 m above that space.

(4) Despite sub-regulation (2), if the 2 required car parking spaces adjoin each other in a garage or carport or in a space constrained by walls, the double space may be 5.5m 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 in which case the number may be reduced to 2.

(6) The consent and report 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.

4.14 Side and rear setbacks

(1) If--

(a) an allotment is in a zone of a planning scheme specified in Schedule 3; and
 (b) the 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 the Schedule to that zone in the planning scheme.

(2) If sub-regulation (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 4.14.

TABLE 4.14--SIDE AND REAR SETBACKS

<i>Building height at any point</i>	<i>Minimum setback from side or rear boundary at that point</i>
3.6m or less	1m
More than 3.6m but not more than 6.9m	1m plus an additional distance calculated at the rate of 300mm for every metre of height over 3.6m
More than 6.9m	2m plus an additional distance calculated at the rate of 1m for every metre of height over 6.9m

(3) The following may encroach into the setback distance required by sub-regulation (1) or (2) by not more than 500mm--

- (a) porches and verandahs;
- (b) masonry chimneys;
- (c) sunblinds;
- (d) screens referred to in regulation 4.19(4)(d) or 4.19(5);
- (e) flues and pipes;
- (f) domestic fuel tanks and water tanks;
- (g) heating and cooling equipment and other services.

(4) The following may encroach into the setback distance required by sub-regulation (1) or (2)--

- (a) landings with an area of not more than 2m² and less than 1m high;
- (b) unroofed stairways and ramps;
- (c) pergolas;
- (d) shade sails;
- (e) eaves, fascia, gutters not more than 600mm in total width;
- (f) carports (subject to regulation 4.15).

(5) This regulation does not apply to a wall which complies with regulation 4.15.

(6) The consent and report 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.

Note: The following diagram illustrates the operation of aspects of regulation 4.14.

Regulation 4.14: Side and rear setbacks

4.15 Walls on boundaries

(1) This regulation applies to the construction of--

(a) a wall on or within 150mm of a side or rear boundary of an allotment; or
(b) a carport constructed on or within 1m of a side or rear boundary of an allotment and which is open on the side facing the boundary or boundaries.

(2) The length of the wall, or of the carport, or of the wall and carport, must not, either by itself or when combined with the length of any existing wall or carport, exceed the greater of the following lengths--

(a) 10m plus 25% of the remaining length of the boundary of the allotment; or
(b) the length of any existing wall or carport constructed on an adjoining allotment which is within 150mm of the boundary of that allotment if the proposed construction abuts the existing wall or carport.

(3) The wall or carport must not exceed--

(a) an average height of 3m; and
(b) a maximum height of 3.6m.

(4) Despite sub-regulation (3), if the wall or carport abuts an existing wall or carport it may be constructed to the same height as that wall or carport.

(5) The consent and report 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.

4.16 Daylight to existing habitable room windows

(1) A building must be set back from a habitable room window in an existing building on an adjoining allotment to provide for a light court to the window that has a minimum area of 3m² 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 wall or carport with an average height of more than 3m 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 sub-regulation (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 sub-regulation (3) is above ground floor level, then for the purposes of that sub-regulation, the wall or carport height is to be measured from the floor level of the room containing the window.

(6) The consent and report 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.

Note: The following diagram illustrates the operation of aspects of regulation 4.16(3).

Regulation 4.16: Daylight to existing windows

Regulation 4.16(3)

4.17 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 within 3m of a boundary of the allotment on which the building is to be constructed; and
- (c) the window is orientated towards the boundary.

(2) The proposed building must be set back from the boundary not less than the distance specified in Table 4.17 for a distance of 3m from each side of the window or that part of the window that is within 3m of the boundary.

TABLE 4.17--SETBACKS FROM NORTH-FACING WINDOWS

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

(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° west to north 30° east.

(4) In this regulation "**north**" means true north.

(5) The following may encroach into the setback distance required by sub-regulation (1) or (2) by not more than 500mm and to a height not exceeding 2.5m--

- (a) flues and pipes;
- (b) domestic fuel tanks and water tanks;
- (c) heating and cooling equipment and other services.

(6) The consent and report 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.

Note: The following diagram illustrates the operation of aspects of regulation 4.17.

Regulation 4.17: Daylight to existing windows

4.18 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 sub-regulation (1), the amount of sunlight to that area must not be further reduced by the construction of the building. (3) The consent and report 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) 40m² with a minimum dimension of 3m.

(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 1.5m high and that has no more than 25% of its area open; and
- (b) which is primarily intended for outdoor recreation activities.

4.19 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 1.7m 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 1.7m above the floor level of the habitable room; and

(c) the ground level below; and

(d) a horizontal distance of 9m 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 1.7m above the floor level and along the perimeter of the raised open space to any point within a horizontal distance of 9m 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 9m referred to in sub-regulation (2)(d) or (3) is to be measured at 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 1.5m from the edge of one window to the edge of the other; or
 - (b) it has a sill height at least 1.7m above floor level; or
 - (c) it has obscure glazing in any part of the window below 1.7m above floor level; or
 - (d) the direct line of sight is obscured by a permanent and fixed screen which 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 sub-regulation (5)(c) may be openable 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 sub-regulation (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 1.8m high at the boundary; and
 - (b) the floor level of the room or the raised open space is less than 800mm above ground level at the boundary.
- (9) The consent and report 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.
- (10) In this regulation "**raised open space**" means a landing with an area of more than 2m², a balcony, a terrace, a deck or a patio.
- (11) In this regulation "**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 1.5m high and that has no more than 25% of its area open; and
 - (b) which is primarily intended for outdoor recreation activities.

4.20 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 3m² and minimum dimension of 1m clear to the sky, not including land on an adjoining allotment; or
 - (b) a verandah 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 sub-regulation (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 500mm from another building on the allotment or the adjoining allotment boundary.
- (3) The consent and report 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.

4.21 Private open space

- (1) If--
- (a) an allotment is in a zone of a planning scheme specified in Schedule 3; and
 - (b) the 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 the Schedule to that zone in the planning scheme.
- (2) If sub-regulation (1) does not apply, a Class 1 building on an allotment must have private open space of not less than 80m² or 20% of the area of the allotment, whichever is the lesser.
- (3) For the purposes of this regulation, the private open space must include an area at the side or rear of the building--
- (a) that is at least 25m² with a minimum dimension of 3m; and
 - (b) that has convenient access from a habitable room (other than a bedroom).
- (4) The consent and report 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.

Division 3--Siting of Class 10a buildings

4.22 Siting of Class 10a buildings

- (1) Unless otherwise approved under the **Subdivision Act 1988** or any corresponding previous enactment, a Class 10a building must be on the same allotment as a building of another class to which it is appurtenant.
- (2) The consent and report of the relevant council must be obtained to an application for a building permit for the construction of a building which does not comply with sub-regulation (1).

Division 4--Class 10b Buildings

4.23 Application of Division

This Division applies to the construction of Class 10b buildings on an allotment.

4.24 Front fence height

- (1) If--
- (a) an allotment is in a zone of a planning scheme specified in Schedule 3; and
 - (b) the Schedule to that zone in the planning scheme specifies a maximum height for a fence, or part of a fence, that is within 3m of the street alignment at the front of an allotment--
- the height of a fence, or part of a fence, that is within 3m of the street alignment at the front of that allotment must not exceed the relevant maximum height specified in the Schedule to that zone in the planning scheme.
- (2) If sub-regulation (1) does not apply, the height of a fence, or part of a fence, that is within 3m of the street alignment at the front of that allotment must not exceed the relevant maximum height specified in Table 4.24.

TABLE 4.24--FRONT FENCE HEIGHTS

<i>Street type</i>	<i>Maximum fence height</i>
A declared road under the Transport Act 1983	2m

Any other street	1.5m
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(3) The consent and report 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.

4.25 Fence setbacks from side and rear boundaries

(1) A fence exceeding 2m in height associated with a dwelling must be set back from a side or rear boundary not less than the distance specified in respect of that boundary in Table 4.25.

TABLE 4.25--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 2.0m but not more than 3.6m	1m
More than 3.6m but not more than 6.9m	1m plus an additional distance calculated at the rate of 300mm for every metre of height over 3.6m
More than 6.9m	2m plus an additional distance calculated at the rate of 1m for every metre of height over 6.9m

(2) This regulation does not apply to a fence that complies with regulation 4.26.

(3) The consent and report 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.

4.26 Fences on side or rear boundaries

(1) The total length of fences that are associated with a dwelling and that are more than 2m in height and that are constructed on, or within 150mm of, a side or rear boundary of an allotment, when combined with the length of any wall, or carport, or wall and carport constructed in accordance with regulation 4.15(2) must not exceed the greater of the following lengths--

- (a) 10m plus 25% of the remaining length of the boundary of the allotment; or
- (b) the length of any wall or carport constructed on an adjoining allotment that is within 150mm of the boundary of that allotment and that abuts those fences.

(2) A fence constructed within 150mm of a side or rear boundary of an allotment must not exceed--

- (a) an average height of 3m; and
- (b) a maximum height of 3.6m along the boundary.

(3) Despite sub-regulation (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--

- (a) it is not more than 2.5m in height; and

(b) it is provided to comply with regulation 4.19 or with a planning scheme that regulates the same matter as regulation 4.19; and

(c) the area of the fence between 2.0m and 2.5m in height has between 20% and 25% of its area open.

(5) The consent and report 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.

4.27 Fences on street alignments

(1) The consent and report of the relevant council must be obtained to an application for a building permit to construct a fence within 9m of a point of intersection of street alignments and exceeding a height of 1.2m above the footpath.

(2) A fence adjacent to a street alignment or public open space must not contain barbed wire or other sharp protrusions unless--

(a) the fence is set back at least 150mm from the street alignment or boundary of the public open space; or

(b) the barbed wire or other sharp protrusion is at a height of at least 2m above the level of the street or public open space.

4.28 Fences and daylight to existing habitable room windows

(1) A fence more than 2m in height must be set back from a habitable room window in an existing building on an adjoining allotment to provide for a light court to the window that has a minimum area of 3m² 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 3m 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 sub-regulation (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 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 consent and report 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.

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

(1) This regulation applies if--

(a) a fence more than 2m 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 within 3m 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 4.29 for a distance of 3m from the edge of each side of the window or that part of the window that is within 3m of the boundary.

TABLE 4.29--SETBACKS FROM NORTH-FACING WINDOWS

<i>Fence height at any point</i>	<i>Minimum setback from side or rear boundary at that point</i>
3·6m or less	1m
More than 3·6m but not more than 6·9m	1m plus an additional distance calculated at the rate of 600mm for every metre of height over 3·6m
More than 6·9m	3m plus an additional distance calculated at the rate of 1m for every metre of height over 6·9m

(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° west to north 30° east.

(4) In this regulation "**north**" means true north. (5) The consent and report 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.

4.30 Fences and overshadowing of recreational private open space

(1) A fence more than 2m 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 consent and report 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) 40m² with a minimum dimension of 3m.

(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 1·5m high and that has no more than 25% of its area open; and
- (b) which is primarily intended for outdoor recreation activities.

4.31 Masts, poles etc.

The consent and report of the relevant council must be obtained to an application for a building permit to construct a mast, pole, aerial, antenna, chimney, flue, pipe or other service pipe which--

- (a) when attached to a building, exceeds a height of 3m above the highest point of the roof of the building; or
- (b) when not attached to a building, exceeds 8m above ground level.'

8. New Schedule 3 inserted

After Schedule 2 to the Building Regulations 1994 **insert--**

**"SCHEDULE 3
PLANNING SCHEMES**

<i>Name of planning scheme</i>	<i>Name of zone</i>
Monash Planning Scheme	Residential 1 Zone (R1Z)
	Residential 2 Zone (R2Z)
	Mixed Use Zone (MUZ)".

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ENDNOTES

[\[1\]](#)

Reg. 1: S.R. No. 81/1994. Reprint No. 5 as at 28 October 1999. Subsequently amended by S.R. Nos 109/2000, 110/2000, 16/2001 and 82/2001.

Table of Applied, Adopted or Incorporated Matter Required by Subordinate Legislation Regulations 1994

Note that the following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 6 of the Subordinate Legislation Regulations 1994.

Statutory Rule Provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document	Regulation 8
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Monash Planning Scheme made under the **Planning and Environment Act 1987** as that planning scheme is amended and in force from time to time Schedules to Residential 1 Zone, Residential 2 Zone and Mixed Use Zone and the provisions of the Planning Scheme (including the planning scheme maps) identifying those Zones