



Presented to	Ordinary Council Meeting 16 April 2022
Related to Item	P22/3981 Review of Local Planning Policy 3.1
Submitted by	Director Urban Planning, Steve Cope
Attachments	Not Applicable

Background:

A proposed amendment to the officer recommendation has been submitted by Cr Mair.

“PROPOSED NOTICE OF AMENDMENT: CITY OF MELVILLE

New Item regarding 3. Fences and Street Walls

3. C4.7 Fencing at T-junctions and round-a-bouts on Local Distributor Roads may be solid.

Officer Comment:

Officers recommend that Elected Members not proceed with the proposal to insert the above deemed to comply provision into LPP3.1 as it is inconsistent with the planning framework and will lead to implementation issues as described below:

Scope of Local Planning Policies.

Under the provisions of Clause 7.3.1 of State Planning Policy 7.3 a local planning policy may amend the deemed to comply provisions of the R-Codes in relation to street walls and fences, however any amendment must be consistent with the relevant design principle.

In this case, the design principle promotes low fences to allow visual surveillance and improve the streetscape. It allow for some consideration for the need for privacy and traffic attenuation on higher order roads on a case by case basis as part of a development application.

The proposed deemed to comply provision allows for solid fencing as of right and as such directly conflicts with this clause.

The R Codes Vol. 1 Cl. 5.2.4 provide for assessment of proposals via a Deemed-to-comply pathway and alternatively via performance-based Design principles.

Council Local Planning Policy 3.1 Part 3 Fences and Street Walls states that the Deemed-to-Comply provisions in Clause 5.2.4 of the R-Codes are replaced with Cl. C4.1 to C4.6 of the Local Planning Policy.

The R Codes Cl. 5.2.4 Design Principles state:



“5.2.4 Street walls and fences P4 Front fences are low or restricted in height to permit surveillance (as per Clause 5.2.3) and enhance streetscape (as per clause 5.1.2), with appropriate consideration to the need: • for attenuation of traffic impacts where the street is designated as a primary or district distributor or integrator arterial; and • for necessary privacy or noise screening for outdoor living areas where the street is designated as a primary or district distributor or integrator arterial.”

The proposed Elected Member amendment is not consistent with the Deemed-to-comply provisions of Cl. 5.2.4, nor with the Design Principles of Cl. 5.2.4 or the R Codes Explanatory Guidelines. A copy of the relevant page is provided below Accordingly it is recommended that the amendment not be entertained.

Implementation

The proposed wording does not provide any detail to enable an assessment and therefore is difficult to interpret and implement.

For example, the clause does not contain a maximum fence height. In the absence of this detail an applicant could build a wall of any height without the need for development approval, leading to poor streetscape outcomes.

Secondly, the proposed deemed to comply provision may result in the Local Planning Policy being invalid having regard to the provision of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as it goes beyond the scope of what a planning policy can do, as noted above. This may call into question the legitimacy of any decision made under this clause.

If LPP3.1 is amended as proposed in the Notice of Motion, officers will be obliged to refer this to the Department of Planning Lands and Heritage (DPLH) for its consideration and advice. The DPLH may advise that the policy provisions are invalid and should be given very limited weight. This will require further modifications to the LPP at a later date.

Conclusion

Officers recommend that Elected Members not proceed with the proposal to insert the above deemed to comply provision into LPP3.1. An alternative to amending the LPP to include a similar clause to the one listed above, could be investigating the validity of such a policy provision separately to the current policy review. The investigation could involve discussions with officers of the DPLH.

General guidelines

5.2 Street walls and fences

(Clause 5.2.4 of R-Codes Volume 1)

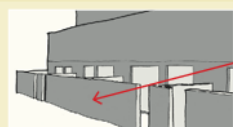
Height of street walls and fences

In recent times and with the trend for larger houses and smaller lots, there is a tendency for some owners to construct high walls or fences at or near the street. This is often justified by the proponent for reasons of privacy, security or protection from traffic noise or headlights.

High walls and solid fences on the front boundary are undesirable because they visually affect the streetscape and generally separate residents from their street and what occurs in it (refer to figure 35).

Provide a clear distinction between private and public areas

Buildings that facilitate a visual connection between the street and private spaces can provide opportunities for high levels of casual surveillance of the street. Appropriate treatment of street walls and fences can clearly define the boundary between private and public areas and contribute to an enhanced streetscape. This reinforces a visual connection between street users and private spaces.



Fencing is non-permeable and prevents visual connection between private and public property.



Fencing is permeable and allows visual connection with the street while providing security and delineating private and public property.

Figure 35: Fencing should not impede visual surveillance of the street by either being too high and/or non-permeable.

Part 5 only

5.2.1 Street walls and fences – Part 5 of R-Codes Volume 1

(Clause 5.2.4 of R-Codes Volume 1)

Fences (excluding pillars) higher than 1.2m should be visually permeable along all street types, including communal streets (refer to Figure 12 in the R-Codes Volume 1). Where a dwelling fronts onto an arterial road carrying high traffic volumes, or where protection is needed from headlight glare from such a road, there may be a case to justify a high wall especially to provide privacy to an outdoor living area. In these circumstances a solid wall of up to 1.8m high would be acceptable for a minimal proportion of the frontage, on approval by the decision-maker and provided the remainder of the frontage provides for views to the street. Design principles are provided in the R-Codes Volume 1 to guide circumstances where a decision-maker could grant such approval.

Ideally, outdoor living areas should be located behind the setback line (R-Codes Volume 1 clause 5.3.1), however, in some circumstances the only possible location for an outdoor living area will be in the street setback area. Where a narrow lot faces north to the street, the street setback area may be the only possible area open to winter sun. In these cases, part of the area should be permitted to be screened from view for privacy. Where a private courtyard is unavoidable in the front setback area, screening with dense planting and/or a permeable fence that will provide reasonable privacy is appropriate (refer to figures 36 - 38).



Figure 36: Traditional and low fences are acceptable.



Figure 37: High walls are not acceptable unless in exceptional circumstances.

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