

## Addendum

Responsible Officer:	Peter Prendergast Manager Statutory Planning
Date of Meeting:	17 May 2022
Meeting of the:	Ordinary Meeting of Council
Item:	P22/3981 – REVIEW OF LOCAL PLANNING POLICY 3.1 RESIDENTIAL DEVELOPMENT.

### DETAIL

At the Ordinary Meeting of Council held 19 April 2022, the Council resolved to defer the above matter. An amendment was presented prior to the deferral. The resolution, amendment and reason for the deferral are below:

***That P22/3981- Review of Local Planning Policy 3.1 Residential Development be deferred to the 17 May 2022 Ordinary Meeting of Council.***

The amendment that was presented by Cr Mair was:

***That a new Item 3. Fences and Street Walls be inserted:***

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

In deferring the matter, the planning merit of introducing the ability for front fences to be solid where they abut a T-Junction or a roundabout on a local distributor road requires consideration. In addition, a request was made that comment be sought from the Department of Planning Lands and Heritage (DPLH) regarding the viability of introducing such a clause to vary the deemed to comply provisions of Clause 5.2.4 of the R Codes within the proposed reviewed Local Planning Policy.

As previously advised in an Advice Note to Council to the 19 April 2022 OMC a Local Planning Policy may contain provisions that amend or replace the deemed to comply provisions of the R Codes, as is proposed by the review of LPP 3.1 as recommended to the Council. A Local Planning Policy cannot however amend or replace the deemed to comply provisions such that they would be inconsistent with the associated design principles.

To introduce a clause within the LPP to allow solid front fencing where a property is located at a T junction or on a roundabout would be inconsistent with the design principle P4 of Clause 5.2.4 of the R Codes. The Design Principle states:

*“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 Design Principles in this case outline the circumstances when a solid front fence may be considered, and confirm that such fencing may be appropriate where properties are located on a primary or district distributor road or an integrated arterial road. The Design Principles do not extend to consideration of properties located on roads that are not directly referred to, including a local distributor road. As such, and as was previously advised, the amendment proposed by Cr Mair cannot be contemplated.

In consideration of the proposed amendment, and as recommended by the Council, advice has also been sought from the Department of Planning, Lands and Heritage (DPLH). In a written response from a senior planning officer of the DPLH, advised as follows:

*“State Planning Policy 7.3 Residential Design Codes (the R-Codes) Clause 7.3.1 outlines what deemed-to-comply provisions can be varied if consistent with the relevant design principles. The design principle for Street Walls and Fences is clear in terms of variations to wall height only being contemplated for primary distributor, district distributor and integrator arterial.*

*As a local distributor falls outside of this classification, the proposed deemed to comply provision is inconsistent with the requirements of Clause 7.3.1 of the R-Codes and the amendment to Local Planning Policy 3.1 Residential Development would require WAPC approval. However as the provision is inconsistent with the relevant design principles of the R-Codes, it is unlikely to be supported by the WAPC.”*

This view is consistent with a legal opinion previously obtained by the City which confirms that changes to the deemed to comply provisions of the R Codes under Part 7 of the Codes can only occur when the design principles are not compromised.

This legal opinion ratifies the position of the City’s officers and officers of the DPLH in that the amendment proposed to allow solid front fences at T junctions and at roundabouts should not be contemplated further. Any decision on the part of the Council to pursue the amendment will necessitate the referral of the Local Planning Policy to the WAPC, who as the advice from the DPLH states will be unlikely to support it.