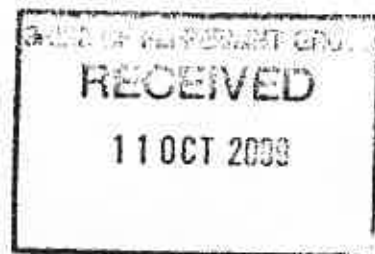


**SHIRE OF PEPPERMINT GROVE  
NATIONAL COMPETITION POLICY LEGISLATIVE REVIEW  
LOCAL LAWS RELATING TO FENCING**



**1. Review Conduct**

This local law review was conducted by Mr E Chown, Co-ordinator of the Local Laws WA Service of WAMA, on behalf of the Shire of Peppermint Grove. The review has been endorsed by the Council of the Shire of Peppermint Grove.

**2. Objective of the local law**

The objectives of this local law are to –

- a. prescribe the specifications for a sufficient fence for purposes of the Dividing Fences Act 1961;
- b. ensure the structural integrity and safety of fences erected within the district; and
- c. establish standards of amenity with which owners and occupiers must comply.

**3. Restrictions on competition contained in the local law**

**3.1 Written Approval is required for new fencing developments**

This entails submissions of plans and specifications and payment of fees (clause 7), special approval where the fence exceeds 1.8 metres (clause 8), a certificate from a structural engineer in the case of a retaining wall (clause 10).

**3.2 An application can be refused on amenity grounds or approved conditionally**

The local government may in its absolute discretion refuse to approve an application if in its opinion the materials or the finishes are not in keeping with the amenity of the district or with surrounding buildings, fences or other improvements (clause 9). In granting an approval the local government may impose such conditions as it sees fit (clause 12).

**3.3 Front boundary fences are to be of open aspect construction**

See clause 13.

The columns, piers or posts forming part of a boundary fence shall not –

- a. exceed 2.1 metres in height above natural ground level;
  - b. exceed 600 millimetres in depth and 600 millimetres in width; and
  - c. be less than 1.8 metres clear of any adjoining column, pier or post (clause 14);
- subject to local government discretions (clause 16).

Infill panels may be solid to a height of 900mm and are to provide a minimum open aspect of 50% above that. They are to be open timber, wrought iron, steel or aluminium palings (clause 15).

**3.4 Certain types of fencing material are prohibited in a thoroughfare frontage fence or front set back area**

The prohibited materials are “corrugated fibre cement sheeting, metal sheeting, or similar material” (clause 17).

These restrictions are classified minor due to the small impact of the restrictions on the economy.

#### **4. Review and Consultation Process**

This local law has drawn to some extent on the provisions of the 'model' local law published in the Local Laws manual but is essentially a reflection of district standards which have come to be expected in the exclusive Peppermint Grove 'estate' as established in earlier by-laws and building practice.

Many of the restrictions within this local law have already been assessed as satisfying NCP principles – see the NCP legislation review following the Fencing Local Law in the Local Laws Manual. This Review examines restrictions not commonly found in fencing local laws, designed to the particular needs of the Shire of Peppermint Grove.

Further consultation will now occur under the provisions of section 3.12 of the Local Government Act 1995.

#### **5. Effects of the restrictions and costs and benefits to society**

##### **5.1 Effects of restriction 3.1**

3.1 Written approval is required for new fencing developments.

##### Objective of this restriction

The objective of this restriction is to ensure that any fence which is erected within the Shire Peppermint Grove conforms with established standards.

##### Costs / Disadvantages

Some inconvenience and cost are associated with making an application to the local government for approval to erect a fence especially if a certificate from a structural engineer is required.

##### Benefits / Advantages

- By maintaining high standards, real estate values are increased throughout the district.
- When approval is given an owner or occupier can proceed with a fencing development in the expectation that –
  - (a) the fence will not be challenged on aesthetic grounds;
  - (b) the fence will be structurally sound;
  - (c) public safety is protected.

##### Public Benefit Test

The benefits are deemed to outweigh the small approval costs in a district where –  
The Council can be and is held accountable for any 'uncharacteristic' developments;  
The prospect of litigation is a reality; and  
Real estate values far exceed those of any other district in Western Australia.

##### Alternatives to the restriction

An alternative would be to stipulate in greater detail which standards would and would not be allowed and dispense with the approvals process, but this could become unduly complex, reduce flexibility and require regular review to accommodate fencing industry change.

##### Conclusion

It is in the interests of all parties that the Council receives detail of fencing plans and gives approval prior to construction being undertaken.

## **5.2 Effect of restriction 3.2**

3.2 An application can be refused on amenity grounds or approved conditionally.

### Objective of this restriction

To ensure that fences are not erected if they would detract from neighbourhood amenity values.

### Costs / Disadvantages

- some fencing types would be excluded from the market;
- higher costs can be forced through limiting choice of materials / dimensions;
- 'personal preference' can be denied for the common good.

### Benefits / Advantages

- neighbourhood real estate values are maintained;
- people derive benefit from living in a more pleasing environment.

### Public benefit test

While the costs and benefits cannot be quantified in money terms, the district community sees greater value in maintaining amenity values, albeit at some small additional cost, than having undesirable developments detract from standards already set.

### Alternatives to the restriction

None. There needs to be some arbiter of amenity values and to appoint a body other than the Council could lead to higher costs and less public accountability.

### Conclusion

It is appropriate that Council oversee community values.

## **5.3 Effect of restriction 3.3**

3.3 Front boundary fences are to be of open aspect construction.

### Objective of this restriction

To accentuate the unique qualities of the housing environment.

### Costs / Disadvantages

- some material types are excluded under this restriction;
- the specifications can lead to higher costs
- some loss of privacy.

### Benefits / Advantages

A unique distinctive character prevails which is partly responsible for the premier residential status enjoyed by this district.

### Public benefit test

Distinctiveness and excellence are more important in this district than fencing cost, which is in many cases a small percentage of the built environment anyway.

### Alternatives to the restriction

None, which would achieve the same certainty of outcomes.

### Conclusion

The restriction adds to amenity values to the benefit of residents.

### **5.4 Effect of restriction 3.4**

3.4 Certain types of fencing material are prohibited in a thoroughfare frontage fence or front setback area.

### Objective of this restriction

To require fencing of a more distinctive character than corrugated fibre cement sheeting or metal sheeting, for compatibility with the housing environment.

### Costs / Disadvantages

- Costs are increased, because the most commonly used fencing materials are prohibited.

### Benefits / Advantages

- The unique and exclusive characteristics of the district are preserved.

### Public benefit test

A resident of the district would simply say using asbestos fibre or metal sheeting in the front premises "is not Peppermint Grove". This is a no, no!

### Alternatives to the Restriction

None which would have the same certainty of outcomes.

### Conclusion

The prohibition on the use of asbestos fibre or metal sheeting in a thoroughfare frontage fence or front setback area is justified in the public interest.

## **6. Outcome of this Review**

The residents of Peppermint Grove have made their own statement about amenity values through the existing built environment ranging from streets lined with Peppermint trees, which give a distinctive flavour to the district, to the exclusive standard of housing, making Peppermint Grove some the highest priced real estate in Australia. Fencing must be compatible with the other built environment. Any additional fencing costs imposed as a result of restrictions contained in the local law, while they cannot be quantified, are deemed low by comparison with –

- a. investment in housing in the district; and
- b. public benefits which accrue to all residents in consequence of the restrictions.

The specifications for a sufficient fence contained in the Schedule do not restrict fencing types but are to facilitate agreement between adjoining owners for the purposes of cost sharing where agreement is not otherwise reached.

This Local Law is especially tailored to the needs of the community and the restrictions have been shown to be justified in the public interest. The Local Law therefore conforms with the NCP principles.