Fencing Local Law

Local Government Act 1995

Council Adopted - 27 June 2011 D53/6/11
Government Gazette - 8 December 2011 No. 239
Effective Date – 22 December 2011

Amendments

Council Adoption	Government Gazette	Effective Date
27 June 2011 D53/6/11	8 December 2011 No. 239	22 December 2011
25 July 2016 CS54/7/16	26 August 2016 No. 154	9 September 2016
14 April 2020 D24/4/20	17 November 2020 No. 191	2 December 2020

Dividing Fences Act 1961
Local Government Act 1995

City of Armadale

FENCING LOCAL LAW 2011

Under the powers conferred by the *Dividing Fences Act 1961,* the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Armadale resolved on 10 October 2011 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the City of Armadale Fencing Local Law 2011.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the Government Gazette.

1.3 Repeal

The City of Armadale By-laws Relating to Fencing published in the Government Gazette on 13 September 2000 is repealed.

1.4 Application

This local law applies throughout the district.

1.5 Interpretation

(1) In this local law, unless the context specifies otherwise-

Act means the *Dividing Fences Act 1961*;

AS or AS/NZS means an Australian Standard or Australian/New Zealand Standard published by Standards Australia;

cattle means buffalo, horse, bull, oxen, steer, heifer, calf, ass, mule, deer, goat, ostrich, pig, sheep or South American camelid;

close proximity means within 600mm of a fence;

Commercial Lot means a lot zoned District Centre, Local Centre or Mixed Business/Residential or an equivalent commercial zone under a Town Planning Scheme and/or Structure Plan, but does not include a lot occupied by residential premises;

dangerous in relation to any fence means-

(a) an electrified fence which does not comply with clause 5.1 of this local law;

(b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;

(c) a fence containing exposed broken glass, un-bonded asbestos fibre, razor wire or any other potentially harmful projection or material; or

(d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

Development Area No.1 means land identified within Development (Structure Planning) Area No.1 on Special Control Area Map No.3 of the City's Town Planning Scheme;

district means the district of the local government;

dividing fence has the meaning given to it in the Act;

electrified fence means a fence carrying or designed to carry an electric charge;

fence means any structure used or functioning as a barrier, irrespective of where it is located and includes any affixed gate or screening or any free standing screening in close proximity;

height in relation to a fence means the vertical distance between-

(a) the top of the fence at any point; and

(b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point; or

(c) where the fence is erected on a retaining wall approved by the local government, from the top of the retaining wall;

Industrial Lot means a lot zoned General Industry, Industrial Business or an equivalent industrial zone under a Town Planning Scheme and/or Structure Plan within the district;

local government means the City of Armadale;

lot has the meaning given to it in the *Planning and Development Act 2005;*

nuisance means –

(a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;

(b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or

(c) interference which causes material damage to land or other property on the land affected by the interference;

owner has the meaning given to it in the Act*;*

razor wire fence means a coiled string wire with pieces of sharp cutting edges set across it at close intervals;

Residential Lot means a lot zoned Residential or an equivalent residential zone under a Town Planning Scheme and/or Structure Plan or a lot occupied by residential premises, but does not include a lot zoned Special Residential or land identified within Development (Structure Planning) Area No.1 on Special Control Area Map No.3 of the local government's Town Planning Scheme;

retaining wall means any structure which prevents the movement of soil or retains soil or structures in order to allow ground levels of different elevations to exist adjacent to one another;

Rural Lot means a lot zoned Rural Living, General Rural or an equivalent rural zone under a Town Planning Scheme and/or Structure Plan within the district;

Schedule means a Schedule to this local law;

street setback area has the meaning given to it for the purposes of the State Planning Policy 7.3 Residential design codes;

screening means any perforated panels or trellises composed of solid or obscured translucent panels;

Special Residential Lot means a lot zoned Special Residential and includes lots identified as Special Control Area No.1 (Roleystone Hills Precinct) under the local government's Town Planning Scheme;

sufficient fence means a fence described in clause 2.1 of this local law;

thoroughfare has the meaning given to it by the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government;

town planning scheme means any gazetted town planning scheme operating within the district;

uniform fence means a fence erected by a developer or subdivider in accordance with a subdivision or development approval which divides a lot from a public place such as pedestrian access way, public open space or road reserve; and

visually permeable means the surface of a fence which has-

(a) continuous vertical or horizontal gaps of at least 50mm width occupying not less than one third of its face in aggregate of the entire surface or where narrower than 50 mm, occupying at least one half of the face in aggregate, as viewed directly from the street: or

(b) a surface offering equal or lesser obstruction to view.

PART 2 – SUFFICIENT FENCES

2.1 Sufficient Fences

(1) A person shall not erect a dividing fence or fence that is not a sufficient fence, unless otherwise approved or required by the local government.

(2) A dividing fence or fence erected prior to 8 April 1988 or lawfully erected prior to this local law coming into operation constitutes a sufficient fence.

(3) Subject to sub-clause (4) and (5), a sufficient fence -

(a) on a Residential Lot is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1;

(b) on a Commercial Lot or Industrial Lot is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 2; and

(c) on a Rural Lot or Special Residential or land within Development Area No.1 is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.

(4) Where a fence is erected on or near the boundary between-

(a) a Residential Lot and an Industrial Lot, a sufficient fence is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1;

(b) a Residential Lot and a Commercial Lot, a sufficient fence is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1; and

(c) a Residential Lot and a Rural Lot, a sufficient fence is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.

(5) Unless otherwise approved or required by the local government, a sufficient fence between lots other than those specified in sub-clause (4) is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1.

PART 3 – FENCING WITHIN FRONT STREET SETBACK AREA

3.1 Fences Within Front Setback Area

(1) On a Residential Lot, a fence erected within the street setback area shall be visually permeable above 1200mm and not exceed a height of 1800mm.

(2) On a Commercial Lot, no fence shall be erected forward of the building line.

(3) On an Industrial Lot, a fence erected within the street setback area shall be visually permeable above 1200mm and not exceed a height of 2400mm.

(4) All fences shall be truncated or reduced to no higher than 750 mm within 1500mm adjoining a vehicle access point where a driveway meets a public street and where two streets intersect.

(5) Sub-clause (4) shall not apply to a visually permeable fence that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.

PART 4 – FENCING MATERIALS, SCREENING AND MAINTENANCE

4.1 Fencing Materials

(1) Subject to clause 2.1, a person shall only construct a fence from materials specified in the Schedules of this local law, unless otherwise approved or required by the local government.

(2) Uniform fencing shall be constructed predominantly from masonry materials and where required by the local government incorporate visually permeable sections above 1200mm to the satisfaction of the local government.

(3) Pre-used materials shall not be permitted in the construction of a fence, unless the pre-used materials are painted, treated and/or upgraded to the satisfaction of the local government.

(4) No person shall erect a fence of impervious material in any place, position or location where it will, or is likely to, act as a barrier to or restrict the flow of stormwater or watercourse.

(5) Fencing surrounding a tennis court shall be constructed and maintained in accordance with the specifications and requirements of Schedule 4.

4.2 Screening

(1) On a Residential Lot, Commercial Lot or Industrial Lot, any screening affixed or free standing in close proximity to a fence shall be designed to integrate with the colours, materials and specification of that sufficient fence to the satisfaction of the local government.

(2) On a Rural Lot or Special Residential Lot, no person shall affix any screening to a fence.

(3) Screening affixed or free standing in close proximity to a fence shall be installed and maintained in accordance with the manufacturer's specifications and not undermine the structural integrity of a fence, cause a nuisance or interfere with an existing asbestos fence so as to cause it to become dangerous.

4.3 Barbed Wire and Broken Glass Fences

(1) An owner or occupier of a Residential Lot or Special Residential Lot shall not erect, affix or allow to remain on any fence on such a lot any barbed wire or other material with spiked or jagged projections.

(2) An owner or occupier of an Industrial Lot or Commercial Lotshall not erect, affix or allow to remain on any fence bounding that lot any barbed wire or other materials with spiked or jagged projections unless the wire or materials are carried on posts at an angle of 45 degrees, and unless the bottom row of wire or other materials is set back 150mm from the face of the fence and is not less than 2000mm from the ground level.

(3) If the posts which carry the barbed wire or other materials referred to in subclause (2) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.

(4) An owner or occupier of a lot shall not erect, affix or allow to remain as part of any fence or wall, whether internal or external on that lot any broken glass.

(5) An owner or occupier of a Rural Lot shall not erect, affix or allow to remain any barbed wire upon a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.

4.4 Maintenance of Fences

(1) An owner shall maintain a fence in good condition and prevent it from becoming damaged, dangerous, dilapidated, unsightly or detrimental to the amenity of the locality and must be capable of securely confining all cattle within the boundaries of the lot.

(2) An owner of a lot on which a uniform fence is erected shall not alter the fence in anyway, or enclose or screen any visually permeable sections of the fence.

PART 5 – ELECTRIFIED AND RAZOR WIRE FENCES

5.1 Electrified and Razor Wire Fences

(1) An owner or occupier of a Residential Lot, Special Residential Lot or Commercial Lot or any other lot abutting such a lot shall not erect or affix an electrified fence or razor wire.

(2) On a Rural Lot or Industrial Lot, an electrified fence shall-

(a) comply with AS/NZS 3016:2002 (as amended from time to time);

(b) be installed and certified by a qualified electrician;

(c) comply with any requirements of Western Power;

(d) be inoperable during hours of business; and

(e) be designed to integrate with the colours, materials and specifications of a sufficient fence.

PART 6 – APPLICATION REQUIREMENTS

6.1 Application for Approval

(1) An owner of a lot may apply to the local government for any discretionary matter contained within this local law.

(2) An application must be-

(a) in writing in a form approved by the local government;

(b) accompanied by any document or information that is required by the local government; and

(c) accompanied by an application fee.

(3) The local government may refuse to consider an application for approval which is not in accordance with subclause (2).

6.2 Determination of Applications

(1) In determining whether to grant its consent to the erection or repair of any fence, the local government may consider, in addition to any other matter that it is authorised to consider, whether the erection or retention of the fence would have an adverse impact on-

(a) the safe or convenient use of any land;

(b) the safety or convenience of any person; or

(c) the visual amenity of the streetscape or neighbouring properties.

6.3 Decision on Application for Approval

(1) The local government may—

(a) approve an application for approval unconditionally or subject to any conditions; or

(b) refuse to approve an application for approval.

(2) If the local government approves an application for approval, it is to issue to the applicant an approval in the form determined by the local government.

(3) If the local government refuses to approve an application for approval, it is to give written notice of that refusal to the applicant.

(4) Where a clause of this local law refers to conditions which may be imposed on an approval or which are to be taken to be imposed on an approval, the clause does not limit the power of the local government to impose other conditions on the approval under subclause (1)(a).

PART 7 – OFFENCES AND ENFORCEMENT

7.1 Notice of Breach

(1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot.

(2) A notice of breach shall –

(a) specify the provision of the local law that has been breached;

(b) specify the particulars of the breach; and

(c) state that the owner of the lot is required to remedy the breach within 28 days from the giving of the notice.

(3) Should an owner fail to comply with a notice of breach, the local government may, by its employees, agents or contractors, enter upon the

lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.

(4) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry on to land will be in accordance with Part 3, Division 3 of that Act.

7.2 Offences and Penalties

(1) A person who fails to comply with or who contravenes any provision of this local law commits an offence and is liable on conviction to a penalty of not less than $250 and not exceeding $5000 and, if the offence is a continuing offence, to a maximum daily penalty of $500.

(2) A person who fails to comply with a notice of breach commits an offence and is liable upon conviction to penalty of not less than $250 and not exceeding $5000 and, if the offence is a continuing offence, to a maximum daily penalty of $500.

7.3 Modified Penalties

(1) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16 (1) of the *Local Government Act 1995*.

(2) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is $500.

(3) Before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that –

(a) commission of the prescribed offence is a relatively minor matter; and

(b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

7.4 Infringement Notices

For the purpose of this local law –

(a) the form of the infringement notice referred to in section 9.16 and 9.17 of the *Local Government Act 1995* is to be in or substantially in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;

(b) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in or substantially in the

form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 8 – OBJECTIONS AND REVIEW

8.1 Objections and Review

When the local government makes a decision under clause 6.3, the provisions of Part 9 Division 1 of the *Local Government Act 1995*, and regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.

Schedule 1

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

[Clause 2.1(3)(a)]

Each of the following is a sufficient fence on a Residential Lot:

A Timber fence, which satisfies the following specifications-

(a) corner posts to be 125mm x 125mm x 2400mm and intermediate posts to be 125mm x 75mm x 2400mm spaced at 2400mm centres;

(b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;

(c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts;

(d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;

(e) rails to be 75mm x 50mm with each rail spanning two bays of fencing double railed or bolted to each post with joints staggered;

(f) the fence to be covered with 75mm x 20mm sawn pickets, 1800mm in height placed 75mm apart and affixed securely to each rail; and

(g) a minimum height of 1800mm up to 2100mm (including screening), except within the street setback area which is subject to requirements outlined in clause 3.1.

B Fibre reinforced pressed cement sheeting, which satisfies the following specifications-

(a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;

(b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement sheet;

(c) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturer's written instructions; and

(d) a minimum height of 1800mm up to 2100mm, except within the street setback area, which is subject to requirements outlined in clause 3.1.

C Masonry (including brick, stone or concrete), which satisfies the following specifications-

(a) footings of minimum 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar or 400mm x 400mm concrete 20MPa with minimum 1 layer 4-L11TM;

(b) pier specifications -

(i) Continuous fence with engaged piers or infill panels between piers maximum 2100mm high with No 2 R6 Galvanised rod continuous in last mortar bed joint;
(ii) Engaged or attached piers 290mm x 290mm (for 90mm wide masonry unit) and 350mm x 350mm (for 110mm wide masonry unit) with No 1 Y12 Galvanised reinforcing rod tied into footing and located centrally in pier.
(iii) Pier core to be filled with 15MPa concrete. Piers at maximum 2100mm centres;

(c) expansion joints in accordance with the manufacturer's written instructions;

(d) a minimum height of 1800mm up to 2100mm (including screening), except within the street setback area, which is subject to requirements outlined in clause 3.1; and

(e) certified by a Structural Engineer as being appropriate for the particular site and wind terrain category.

D Composite fence, which satisfies the following specifications for the brick construction-

(1) (a) brick piers of minimum 230mm x 230mm at 1800mm centres bonded to a minimum height base wall of 514mm; 290 x 290mm or 350 x 350mm piers shall be core filled with 15MPa concrete;

(b) each pier shall be reinforced with one Y12 galvanised rod the height of the pier with a 250mm horizontal leg bedded into a 400mm deep concrete footing and set 65mm above the base of the footing. The footing shall be 100mm larger than the size of the pier. The top of the footing shall be 1 course (86mm) below ground level;

(c) the minimum ultimate strength of brickwork shall be 20MPa. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;

(d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer;

(e) control joints in brickwork shall be provided with double piers at a maximum of 6000mm centres;

(f) a minimum height of 1800mm up to 2100mm, except within the street setback area, which is subject to requirements outlined in Clause 3.1; and

(g) certified by a Structural Engineer as being appropriate for the particular site and wind terrain category.

(2) (a) Attached brick piers of a minimum 230mm x 350mm x 2700mm centres bonded to the base wall;

(b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified;

(c) a minimum height of 1800mm up to 2100mm (including screening), except fencing within the street setback area which is subject to requirements outlined in clause 3.1; and

(d) certified by a Structural Engineer as being appropriate for the particular site and wind terrain category.

E **Colorbond metal, wrought iron, tubular steel or Duralok PVC fencing systems , which satisfies the following specifications-**

(a) erected in accordance with the manufacturer's specifications and instructions; and

(b) having a height of at least 1800mm up to 2100mm (including screening), except within the street setback area, which is subject to the requirements outlined in clause 3.1.

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT AND AN INDUSTRIAL LOT[Clause 2.1(3)(b)]

Each of the following is a sufficient fence on a Commercial Lot and an Industrial Lot:

A PVC coated rail-less link mesh, chain mesh or steel mesh, which satisfies the following specifications-

(a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;

(b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3500mm centres and with footings of a 225mm diameter x 600mm;

(c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post;

(d) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together or single 4mm wire;

(e) rail-less link, chain or steel mesh is to be to a height of 2000mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm; and

(f) galvanised link mesh wire to be 2000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3600mm and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.

B Fences of timber, masonry (brick, stone or concrete), fibre cement, colorbond or Duralok PVC which satisfies the following specifications-

(a) constructed to the minimum specifications referred to in Schedule 1; and

(b) having a height of at least 1800mm up to 2400mm, including screening, except within the street setback area which is subject to the requirements outlined in clause 3.1.

Schedule 3

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT, SPECIAL RESIDENTIAL LOT AND LAND WITHIN DEVELOPMENT AREA NO. 1[Clause 2.1(3)(c)]

Each of the following is a sufficient fence on a Rural Lot and Special Residential Lot and land within development area no. 1-

A Post and Wire Construction

(1) In the case of a non-electrified fence of post and wire construction:-

(a) wire shall be high tensile wire and not less than 2.5mm. A minimum of five wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases;

(b) posts shall be of indigenous timber or other suitable material including –

(i) timber impregnated with a termite and fungicidal preservative;

(ii) standard iron star pickets; or

(iii) concrete;

cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn. Posts to be set minimum 600mm in the ground and 1200mm above the ground; and

(c) strainer posts shall be not less than 2250mm long and 50mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000mm in the ground.

(2) An electrified fence complying with sub-clause (1) and clause 5.1(2) of this local law.

B Post and Rail Construction

(a) All posts to be round of durable grade timber as defined by Australian Standards or other suitable material including timber impregnated with termite and fungicidal preservative cut not less than 2400mm long x 125mm diameter at the small end. Posts to be set minimum 900mm in the ground and 1500mm above the ground; and

(b) All rails to be round of the same material specified in (a) cut not more than 2100mm long x 100mm diameter at the small end to be properly connected using R6 rod or double wire. No more than 3 rails to be used between posts.

Schedule 4
SPECIFICATIONS FOR TENNIS COURT FENCING[Clause 4.1(5)]

The following are specifications for fencing surrounding a tennis court-

(a) the fence is not more than 3600mm in height;

(b) the whole of the fence is at least 900mm from the boundary between the lot on which the tennis court is located and the adjoining lot, or if it is less than 900mm, the owner of the adjoining lot has first been given the opportunity to make submissions to the local government on the location of the fence;

(c) the corner posts are at least 50mm nominal bore galvanised 3.6mm gauge pipe set into 750mm x 230mm diameter concrete bases;

(d) the intermediate fence posts are of not less than 40mm nominal bore galvanised 3.2mm gauge pipe set into 600mm x 230mm diameter concrete bases and are not more than 3000mm apart;

(e) corner stays are at least 40mm nominal bore galvanised 3.2mm gauge pipe concreted into the ground and secured to corner posts by clamp on fittings;

(f) the chain link fabric mesh is not more than 3600mm in height and is 50mm x 2.5mm poly-vinyl chloride coated or galvanised; and

(g) the supporting cables are double twisted 3.15mm poly-vinyl chloride coated wire and are fixed 75mm from the top and bottom of the mesh and 1530mm from the ground level.

Dated 21st day of November 2011

The Common Seal of the City of Armadale was affixed in the presence of –

H A ZELONES, JP, Mayor
R.S. TAME, Chief Executive Officer