

Local Government Act 1995

Dividing Fences Act 1961

CITY OF WANNEROO

**FENCING LOCAL LAW
2015**

Contents

- Part 1 - Preliminary 4**
 - 1.1 Title..... 4
 - 1.2 Commencement 4
 - 1.3 Repeal 4
 - 1.4 Application of local law 5
 - 1.5 Terms used..... 5
 - 1.6 Interpretation 7
- Part 2 - Fencing - general 8**
 - 2.1 Dividing fences..... 8
 - 2.2 Sufficient fence..... 8
 - 2.3 Fences within front setback - permit requirement 9
 - 2.4 Fences on secondary frontages 9
 - 2.5 Sightlines at vehicle access point 9
 - 2.6 Maintenance of fences 9
 - 2.7 Prohibited fencing materials..... 10
 - 2.8 Gates in fences..... 10
- Part 3 - Estate fences 10**
 - 3.1 Estate fence..... 10
 - 3.2 Repairs to estate boundary fences 10
- Part 4 - Tennis court fencing 10**
 - 4.1 Tennis court fencing 10
- Part 5 - Electrified, barbed and razor wire fences 11**
 - 5.1 Requirement for a permit..... 11
- Part 6 - Permits..... 12**
 - 6.1 Application for a permit 12
 - 6.2 Determining an application 12
 - 6.3 Revocation of a permit 12
- Part 7 - Objections and review 13**
 - 7.1 Objection and review rights..... 13
- Part 8 - Enforcement..... 13**
 - 8.1 Offences and general penalty 13
 - 8.2 Prescribed offences..... 13

8.3 Form of notices	14
Schedule 1.....	15
Schedule 2.....	16
Schedule 3.....	17
Schedule 4.....	18

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FENCING LOCAL LAW 2015

Under the powers conferred by the *Local Government Act 1995* and the *Dividing Fences Act 1961* and under all other enabling powers, the Council of the City of Wanneroo resolved on [DD/MM]2015 to make the following local law.

Part 1 - Preliminary

1.1 Title

This is the *City of Wanneroo Fencing Local Law 2015*.

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 following provisions of the *City of Wanneroo Private Property Local Law 2001*, published in the *Government Gazette* on 30 April 2002, are repealed:

- (a) in clause 1.6, the definitions of “boundary fence”, “dangerous”, “dividing fence”, “estate entry statement”, “estate boundary fence”, “front fence”, “front setback area”, “gradient”, “height”, “industrial lot”, “number”, “open fence”, “retaining wall”, “sacrificial graffiti protection”, “sufficient fence” and “swimming pool”;
- (b) Parts 3 to 9 inclusive;
- (c) Part 11;
- (d) clause 13.1;
- (e) the First, Second, Third and Fourth Schedules; and
- (f) in the Fifth Schedule, all items under the headings of Part 3 – Fencing General, Part 5 – Estate Fences, Part 6 – Tennis Court Fencing, Part 7 – Security and Flood Lighting, Part 8 – Electrified, Barbed and Razor Wire Fences, Part 9 – Street Numbering, Part 11 – Private Swimming Pools, and the items under Part 13 relating to clause 13.1(1) and 13.1(2).

1.4 Application of local law

This local law applies throughout the district.

1.5 Terms used

In this local law unless the context requires otherwise -

Act means the *Local Government Act 1995*;

authorised person means a person authorised by the local government under section 9.10 of the Act to carry out functions with respect to this local law;

commercial lot means a lot where a commercial use –

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

dangerous, in relation to any fence, means -

- (a) an electrified fence, or one containing barbed or razor wire, other than a fence –
 - (i) in respect of which a permit has been issued and is current; or
 - (ii) that is constructed and maintained in accordance with this local law;
- (b) a fence containing exposed broken glass, or any other potentially harmful projection or material; or
- (c) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

district means the district of the local government;

dividing fence has the meaning given to it in the *Dividing Fences Act 1961*;

Section 5 of the *Dividing Fences Act 1961* defines “dividing fence” to mean “a fence that separates the land of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary”.

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

estate boundary fence means a fence around the external boundary of a subdivision of land to indicate the extent of that subdivision and includes any special works or construction that identifies the entrance to that land;

estate entry statement means a fence or wall that identifies the entrance of an estate, and includes any sign (indicating the estate name and locality), sculpture, flagpole or flag;

estate fence means an estate entry statement or an estate boundary fence;

fence means any structure that is used or functions as a barrier, irrespective of where it is located, and includes a gate that separates the road reserve and a lot adjacent to the road reserve;

front boundary means the boundary that separates a thoroughfare and the front of a lot;

front fence means a fence in the front setback area of a lot;

front setback means the horizontal distance between the front boundary and a wall of a building, measured at a right angle to the front boundary;

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;

industrial lot means a lot where an industrial use –

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

land includes a house, building, work or structure, in or on the land;

local government means the City of Wanneroo;

local planning scheme means a local planning scheme of the local government;

lot means a defined portion of land for which a separate certificate of title has been issued and includes a strata lot;

natural ground level, in relation to a development, means –

- (a) the level approved, for the purposes of the development, by the local government, under a local planning scheme; or
- (b) in any other case, the level which existed immediately before the commencement of the development (including any site works);

open fence means a fence –

- (a) that has continuous vertical gaps with a minimum gap width of 50 mm with the area of gaps being not less than one third of the area of the fence face; and
- (b) the lower portion of which may be closed up to a height of 1.0 m above the natural ground level immediately in front of the fence but, where the natural ground level slopes, the height of the closed portion is to be no more than 1.0 m from the base of the fence;

penalty unit has the meaning given to it in clauses 4 and 5 of the *City of Wanneroo Local Law Relating to Penalty Units*;

permit means a permit under Part 6;

person has the meaning given to it in the *Interpretation Act 1984*;

planning permit means a permit given under a local planning scheme;

private property means any land that has a separate certificate of title and that is either in private ownership or is the subject of a lease or agreement enabling its use for private purposes, and includes any building or structure on the land;

public place means a place to which the public has access;

reserve means land (including a parkland or foreshore) in or adjoining the district that is –

- (a) set apart for the use and enjoyment of the public; or
- (b) acquired for public purposes and vested in or under the care, control and management of the local government;

residential lot means a lot where a residential use –

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

rural lot means a lot where a rural use –

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

secondary frontage, in the case of a lot that has a frontage and access to more than one road, means the longer or longest of the boundaries that separates the lot from a road reserve;

special residential lot means a lot within a special residential zone under a local planning scheme;

special rural lot means a lot within a special rural zone under a local planning scheme; and

sufficient fence means a fence described in clause 2.2.

1.6 Interpretation

Nothing in this local law affects a provision in any other written law in respect of a building licence, or other approval or authorisation that might be required for a fence.

Under section 3.7 of the Act, this local law is inoperative to the extent that it is inconsistent with the Act

Part 2 - Fencing - general

2.1 Dividing fences

- (1) Unless by agreement between the owners of adjoining properties, a person -
 - (a) must not construct or alter a dividing fence on a lot that does not satisfy the requirements of a sufficient fence;
 - (b) must maintain a dividing fence in a condition which satisfies the requirements of a sufficient fence; or
 - (c) must not alter the level of the ground adjoining the boundary so as to change the height of a dividing fence unless the dividing fence is altered, reconstructed or relocated so as to satisfy the requirements of a sufficient fence.
- (2) An agreement in respect of a dangerous fence is taken not to be an agreement between owners of adjoining properties for the purposes of clause 2.1(1).

2.2 Sufficient fence

- (1) Subject to subclauses (2) and (3), a sufficient fence -
 - (a) on a residential lot or a special residential lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 1.
 - (b) on a commercial lot or an industrial lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 2; and
 - (c) on a rural lot or a special rural lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 3.
- (2) Where a fence is constructed on or near the boundary between the residential lot, or a special residential lot, and any of the following –
 - (a) an industrial lot;
 - (b) a commercial lot;
 - (c) a rural lot; or
 - (d) a special rural lot,

a sufficient fence is a dividing fence constructed and maintained in accordance with the requirements of Schedule 1.

- (3) Where –

- (a) the zoning of a lot is changed from Rural to Residential under a local planning scheme; and
- (b) immediately before that zoning change a dividing fence on that lot is a sufficient fence,

the requirements of Schedule 1 are not to apply to that dividing fence until a residential use becomes the predominant use for that lot.

2.3 Fences within front setback - permit requirement

A person must not, without a permit, construct a fence greater than one metre in height on or near a boundary within the front setback area of a residential lot unless -

- (a) the fence is an open fence that is constructed and maintained in accordance with the requirements of Schedule 1; or
- (b) the fence is a side boundary fence which uniformly slopes down from no more than 1.8m to no more than 1.0 m in height over a maximum distance of 1.5m from the start of the front set back area from the building to the front of the lot.

2.4 Fences on secondary frontages

Subject to clauses 2.3 and 2.5, a person must not, without a permit, construct a fence on any secondary frontage of a residential lot unless the fence is a sufficient fence.

2.5 Sightlines at vehicle access point

- (1) A fence adjacent to a vehicle access point must be truncated with the minimum dimension of the truncation being 1.5m or the fence reduced in height to no more than 0.75m.
- (2) Subclause (1) does not apply -
 - (a) to a fence which is an open fence that does not obscure the lines of vision of the driver of a vehicle using the access point; or
 - (b) where there is a distance of 3.5m or more between the fence and a thoroughfare, at their closest point

2.6 Maintenance of fences

- (1) This clause applies to a fence that is –
 - (a) a front fence; or
 - (b) a dividing fence that separates a lot and a thoroughfare.
- (2) An owner or occupier of a lot on which a fence is constructed must maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, unsightly, or prejudicial to the amenity of the locality.

2.7 Prohibited fencing materials

- (1) A person must not use broken glass in the construction of a fence.
- (2) Except in accordance with a permit, a person must not use razor wire or other material with spiked or jagged projections in the construction of a fence unless the fence is a sufficient fence.

2.8 Gates in fences

A person must not construct or maintain on a lot a gate -

- (a) in a dividing fence that abuts a thoroughfare, road reserve, pedestrian access way, right of way, reserve, local government property or public property - without a permit or unless the local government has otherwise approved the access; or
- (b) in any other dividing fence - unless the gate opens into the lot or unless it slides parallel to, and on the inside of, the dividing fence.

Part 3 - Estate fences

3.1 Estate fence

- (1) A person must not construct an estate fence without a permit.

Note: An estate entry statement or estate boundary fence may also require planning permit under a local planning scheme.

- (2) Where an estate fence is constructed and contains an estate name, the estate fence must also depict the suburb name in equal prominence.

3.2 Repairs to estate boundary fences

An owner or occupier of a lot adjacent to an estate boundary fence must, where that fence is damaged, dilapidated or in need of repair, ensure that -

- (a) it is repaired or replaced with the same or similar materials with which it was first constructed; and
- (b) so as far as practicable the repaired or replaced section is the same as the original fence.

Part 4 - Tennis court fencing

4.1 Tennis court fencing

- (1) This clause does not apply to a rural lot.
- (2) A person shall not erect a fence around or partly around a tennis court on a lot unless -

- (a) the fence is less than 3.6m 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; and
- (c) the fence is constructed of chain link fabric mesh and is 50mm x 2.5mm poly-vinyl chloride coated or galvanised, and is erected in accordance with the manufacturer's specification.

Part 5 - Electrified, barbed and razor wire fences

5.1 Requirement for a permit

- (1) An owner or occupier of a lot must not -
 - (a) have or use an electrified fence on that lot -
 - (i) without first obtaining a permit; and
 - (ii) except in accordance with that permit; or
 - (b) have a fence constructed wholly or partly of barbed or razor wire on that lot (unless it is a sufficient fence) -
 - (i) without first obtaining a permit; and
 - (ii) except in accordance with that permit.
- (2) Clause 5.1(1) does not apply to a fence on a rural lot or a special rural lot where the keeping of stock is permitted and the fence is necessary for stock control.
- (3) A permit to have and use an electrified fence on a lot cannot be issued -
 - (a) if the lot is, or abuts, a residential lot;
 - (b) unless the fence complies with AS/NZS 3016:1994; and
 - (c) unless the fence is rendered inoperable during the hours of business operations, if any, on the lot.
- (4) A permit to have on a lot a fence constructed wholly or partly of barbed or razor wire cannot be issued unless -
 - (a) the fence is proposed to be within 3m of the boundary of the lot; or
 - (b) the barbed or razor wire used in the construction of the fence is to be higher than 2m but not more than 2.4m above the natural ground level.

Part 6 - Permits

6.1 Application for a permit

- (1) An owner or occupier of land may apply to the local government for a permit under this Part.
- (2) An application for a permit must –
 - (a) be in the form (if any) determined by the local government;
 - (b) include -
 - (i) a written consent signed by the owner of the land on which the proposed fence is to be located – unless the applicant is the owner of that land; and
 - (ii) any further information that may be required by the local government; and
 - (c) be accompanied by any fee imposed by the local government under sections 6.16-6.19 of the Act.

6.2 Determining an application

- (1) The local government may refuse to consider an application that does not comply with clause 6.1.
- (2) The local government may –
 - (a) approve an application, subject to any conditions that it considers to be appropriate; or
 - (b) refuse an application.
- (3) If the local government approves an application, it is to issue its permit in writing to the applicant.
- (4) The local government may vary a condition to which a permit is subject by giving written notice to the applicant and the varied condition takes effect 7 days after that notice is given.

6.3 Revocation of a permit

The local government may revoke a permit if -

- (a) the owner (or the occupier with the owner's written consent) requests the local government to do so;
- (b) the fence to which the permit relates is being, or has been, demolished and is not proposed to be, or has not been, rebuilt for a period of at least 6 months;

- (c) the circumstances are such that the permit could not be issued under this local law; or
- (d) the owner or occupier fails to comply with a condition of the permit or breaches a provision of this local law in respect of the fence that is the subject of the permit.

Part 7 - Objections and review

7.1 Objection and review rights

Division 1 of Part 9 of the Act applies to a decision under this local law to –

- (a) to refuse an application for a permit;
- (b) to impose or vary a condition of a permit; or
- (c) to revoke a permit.

A person affected by a decision referred to in clause 7 may have a right to object to the decision (to the council or a committee of the local government) and/or to apply to the State Administrative Tribunal for a review of the decision.

Part 8 - Enforcement

8.1 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not less than \$500 and not exceeding \$5,000 and, if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

8.2 Prescribed offences

- (1) An offence against a clause specified in Schedule 4 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 4.
- (3) If this local law expresses a modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

8.3 Form of notices

For the purposes of this local law -

- (a) the form of the infringement notice referred to in section 9.17 of the Act is Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

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Schedule 1
(Clause 2.2(1)(a))

A SUFFICIENT FENCE ON A RESIDENTIAL OR SPECIAL RESIDENTIAL LOT

1. This Schedule does not apply to an estate fence.
2. On a residential or special residential lot, a sufficient fence is a dividing fence that -
 - (a) is constructed of:
 - (i) corrugated fibre-reinforced pressed cement sheeting;
 - (ii) timber pickets;
 - (iii) brick, stone or concrete;
 - (iv) factory coloured sheet metal post and panelled fence; or
 - (v) any combination of the materials described in paragraphs (i)-(iv);
and
 - (b) and is between 1.75m and 1.85m in height.
3. In the case of a front fence –
 - (i) is 1.0m or less in height; or
 - (ii) is between 1.0m and 1.8m in height; and is an open fence; and
 - (iii) if the fence is a side boundary fence that uniformly slopes down from no more than 1.8m to no more than 1.0 m in height over a maximum distance of 1.5m from the start of the front set back area from the building to the front of the lot.

Schedule 2
(Clause 2.2(1)(b))

A SUFFICIENT FENCE ON A COMMERCIAL OR INDUSTRIAL LOT

1. This Schedule does not apply to an estate fence or a front fence.
2. On a commercial or industrial lot, a sufficient fence is a dividing fence that –
 - (a) is constructed of -
 - (i) link mesh, chain mesh or steel mesh - and is no higher than 2.0m unless it is topped with up to 3 strands of barbed wire to a total height of no more than 2.4m;.
 - (ii) fibre reinforced cement sheets;
 - (iii) painted or galvanized steel or aluminium sheeting; or
 - (iv) timber, brick, stone or concrete; and
 - (b) is no more than 2.4m in height.

Schedule 3
(Clause 2.2(1)(c))

A SUFFICIENT FENCE ON A RURAL OR SPECIAL RURAL LOT

1. This Schedule does not apply to an estate fence.
2. On a rural or special rural lot, a sufficient fence is -
 - (a) a front fence that -
 - (i) is less than 1.0m in height; or
 - (ii) is constructed and maintained as an open fence and does not exceed 1.8m in height; and
 - (b) any other dividing fence that -
 - (i) is no more than 1.2m in height; and
 - (ii) is constructed of posts and wire.

Schedule 4

(Clause 8.2)

PRESCRIBED OFFENCES AND MODIFIED PENALTIES

Clause No	Nature of Offence	Penalty Unit
Part 2 - Fencing - general		
2.1(1)(a)	Constructing or altering a dividing fence which is not a sufficient fence	25
2.1(1)(b)	Failing to maintain a fence in a condition to satisfy requirements of a sufficient fence	25
2.1(1)(c)	Altering ground level of a fence without satisfying the requirements of a sufficient fence	25
2.3	Constructing without a permit a fence higher than 1 m within the front setback which is not an open fence	25
2.4	Constructing without permit a fence which is not a sufficient fence on a secondary frontage	25
2.5	Constructing a fence adjacent to an access point without a truncation	25
2.6(2)	Failure to maintain a fence in good condition to prevent fence becoming dangerous, dilapidated, unsightly	25
2.7(1)	Using broken glass in construction of a fence	25
2.7(2)	Using broken glass, barbed or razor wire, spiked or jagged projections in fence construction without permit	25
2.8(a)	Constructing or maintaining a gate in a fence opening on to local government property or a thoroughfare without approval or permit	25
2.8(b)	Constructing or maintaining a gate in a fence not opening into the lot or by sliding parallel and on inside of fence	25
Part 3 - Estate fences		
3.1(1)	Constructing an estate fence without a permit	25
3.2(a)	Failure to repair or replace a damaged estate boundary fence with same or similar materials as original fence	25
Part 4 - Tennis court fencing		
4.1(2)	Constructing tennis court fencing in contravention of local law	25
Part 5 – Electrified, barbed and razor wire fences		
5.1(1)(a)	Having and using an electrified fence without a permit	25
5.1(1)(b)	Having and using a barbed or razor wire fence without a permit	25
	Other offences not specified	25

<p>Note: Penalty Units are prescribed in the City of Wanneroo Penalty Units Local Law 2015. At 14 November 2015 when the local law came into effect one penalty unit was \$10.00.</p>
