

## 12.4 Fencing Local Law 2020

<b>Location</b>	Town-wide
<b>Reporting officer</b>	Liam O'Neill
<b>Responsible officer</b>	Robert Cruickshank
<b>Voting requirement</b>	Absolute majority
<b>Attachments</b>	1. Proposed Fencing Local Law 2020 [ <b>12.4.1</b> - 21 pages] 2. Fencing Local Law 2000 public submissions [ <b>12.4.2</b> - 1 page]

### Recommendation

That Council:

1. Determines that as a result of the review of the *Town of Victoria Park Local Laws Relating to Fencing*, that this local law should be repealed and replaced, in accordance with section 3.16 of the *Local Government Act 1995*.
2. Gives notice that it intends to make the *Town of Victoria Park Fencing Local Law 2020*, as at attachment 1, which will replace the *Town of Victoria Park Local Laws Relating to Fencing* in accordance with section 3.12 of the *Local Government Act 1995*.
3. Notes the submissions received in relation to the review and the explanatory memorandum for the *Town of Victoria Park Fencing Local Law 2020* as at attachment 2 and attachment 3 respectively.

#### *Purpose and Effect of the Local Law*

The purpose of this local law is to prescribe what constitutes a sufficient fence and the standard for the construction of fences throughout the Town of Victoria Park.

The effect of this local law is to establish the requirements for fencing within the Town of Victoria Park.

## Purpose

To present the results of the review of the *Town of Victoria Park Local Laws Relating to Fencing*.

## In brief

- Council at its meeting on 18 February 2020 resolved that a review of the *Town of Victoria Park Local Laws Relating to Fencing* of 2000 be conducted.
- The recommendation of the review is to repeal and replace the existing local law.
- The proposed replacement local law is based off the *City of Perth Fencing Local Law 2015* and draft fencing local law in the City of Canning with some adaptations.
- The proposed replacement local law is recommended to be advertised for public comment.

## Background

1. The *Dividing Fences Act 1961* empowers local governments to make local laws to determine what constitutes a 'sufficient fence' in the local government district. Likewise, the *Local Government Act 1995* allows a local government to make local laws for the good government of its district. The *Local Government Act 1995* further allows local governments to make local laws for building work, demolition work, a standard for the construction or demolition of incidental structures, or the use and

maintenance of, and requirements in relation to, incidental structures, such as fencing. Through this local law a local government can determine:

- (a) what fences may look like;
- (b) how fences are to be constructed;
- (c) what materials can be used in construction; and
- (d) to what standards they are to be built.

2. The Town of Victoria Park has implemented this through the *Town of Victoria Park Local Laws Relating to Fencing* which was gazetted in September 2000. The last review of the local law occurred in 2011 where no changes were made.
3. A statutory review of this local law has been conducted in accordance with section 3.16 of the *Local Government Act 1995* and four submissions have been received from the public.
4. Since 2000, the *Planning and Development Act 2005* and *Building Act 2011* have been introduced which has changed legislation affecting fencing.
5. If no local law exists relating to fencing, then the standard of fencing would default to either:
  - (a) any substantial fence that is ordinarily capable of resisting the trespass of cattle and sheep; or
  - (b) any fence determined to be a sufficient fence by the court pursuant to the *Dividing Fences Act 1961*.

## Strategic alignment

Civic Leadership		
Strategic outcome	Intended public value outcome or impact	
	CL08 - Visionary civic leadership with sound and accountable governance that reflects objective decision-making.	Ensuring an up to date and effective local law promotes sound governance.
	CL10 - Legislative responsibilities are resourced and managed appropriately, diligently and equitably.	An effective fencing local law ensures the Town is able to fulfill its legislative responsibilities in urban planning and building.

Environment		
Strategic outcome	Intended public value outcome or impact	
	EN01 - Land use planning that puts people first in urban design, allows for different housing options for people with different housing need and enhances the Town's character.	The revised fencing local law seeks to improve the options available in relation to fencing in a way the improves the Town's character.

## Engagement

Internal engagement	
Stakeholder	Comments
Building Services	Building services provided significant input into the building aspects of the local law
Urban Planning	Urban planning were closely involved in the development of sections of the local

	law relating particularly to front fencing and planning approvals.
Street Improvement	Street improvement provided advice relating to the appropriate fencing sightlines.
Elected members	Elected members were provided with a draft of the new fencing local law to provide their feedback.

External engagement	
Stakeholders	Community
Period of engagement	2 March 2020 – 17 April 2020
Level of engagement	2. Consult
Methods of engagement	Your thoughts
Advertising	Local public notice
Submission summary	4 submissions received
Key findings	Submissions advocated clarifications and changes to the local law in matters such as asbestos, barbed wire fencing and different fencing materials. The proposed local law meets all of these changes.

Other engagement	
Stakeholder	Comments
Department of Local Government, Sport and Cultural Industries	No specific comment provided, only requested to receive the results of the review.
Department of Mines, Industry Regulation and Safety	No response received.
McLeods Barristers and Solicitors	The Town engaged McLeods to provide legal advice in relation to the proposed law.

## Legal compliance

[Section 3.12 of the Local Government Act 1995](#)

[Section 3.16 of the Local Government Act 1995](#)

[Dividing Fences Act 1961](#)

## Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	Not applicable.				Low	
Environmental	Not applicable.				Medium	
Health and safety	The towns local laws made in relation to fencing are inadequate to protect health and safety.	Major	Possible	High	Low	Treat by amending the local law.
Infrastructure /ICT systems/ utilities	Not applicable.				Medium	
Legislative compliance	The Town fails to conclude the review of the <i>Local Laws Relating to Fencing</i> .	Moderate	Unlikely	Medium	Low	Treat by resolving the review of the local law.
Reputation	The towns local laws made in relation to fencing are inadequate.	Moderate	Unlikely	Medium	Low	Treat by updating the local law.
Service delivery	Not applicable.				Medium	

## Financial implications

### Current budget impact

Sufficient funds exist within the annual budget to address this recommendation.

## Future budget impact

The Town currently does not impose any fees or charges in relation to the local laws relating to fencing. A person instead currently applies for a building permit.

This law is not scheduled if ultimately adopted to take effect until 1 July 2021. It is intended to include in the 2021-2022 budget the following fees and charges for this local law:

- Application fee for approval under Part 5 of the draft local law of \$147.00 which aligns with the development application fee for an application worth less than \$50,000.
- Inspection fee for any onsite inspection of \$105.00 per inspection.

In the past year there were 22 applications relating to fencing so these fees would be valued at \$3,234.00. Inspections are however uncommon so no income is anticipated.

## Analysis

6. The current fencing local law, made in 2000 is somewhat outdated and uses terms that are no longer relevant in planning and building legislation. The [City of Perth Fencing Local Law 2015](#) was used as the basis for a replacement, being from a neighboring district and recently made. Further, the Town additionally looked to the draft local law which was being advertised in the City of Canning.
7. From an operational perspective, there were shortcomings in the current local law as it was not updated with the passage of the *Building Act 2011* or numerous changes to the Town Planning Scheme No.1. These shortcomings meant that the Town's Building Surveyors found it difficult to administer and enforce this law.
8. From a strategic perspective, the Fencing Local Law is an instrument that the Town can enforce and is binding on property owners. This means an opportunity existed to update the law to work to improve visual amenity and respond to residents' concerns.
9. In relation to the interplay between a development application, building permit and this local law for fence on a residential property :
  - Development approval is required for a fence in the front setback area where not satisfying the deemed-to-comply requirements of the Town's Local Planning Policy 'Streetscape'. Development approval is not required for a fence not in the front setback area.
  - Under Schedule 4 of the Building Regulations 2012, fences will be exempt from requiring a building permit.
  - Approval for a fence will be required under Part 5 of the Local Law where stated as requiring approval under the Local Law or where the fence is a masonry fence exceeding a height of 1.2m.
  - Where development approval is issued for a fence in a front setback area, then a further approval will not required under the Local Law except where the fence is of masonry construction and exceeds a height of 1.2m.

### Key changes

10. Fencing construction will be required to meet the requirements of the *Building Act 2011*, the Building Code and Australian Standards. This may include the need to obtain approval and conform to relevant standards, particularly in relation to wind resistance and masonry fences and walls.

11. The specifications for fencing are now made less specific to capture that fences should conform to the manufacturer's specifications or relevant Australian standards instead of the Town's standards from 2000.
12. Barbed wire fencing will now require a permit to be installed in the Town of Victoria Park. Likewise, barbed wire fencing will not be permitted in a residential area in order to protect visual amenity.
13. Where approval is required for a fence under the Local Law, then that will be by way of fence approval rather than a building permit.
14. Introducing a provision that where development approval has been obtained for a fence, then a further approval under this Local Law is not required unless the fence is of masonry construction and greater than 1.2m height.
15. A number of new offences are proposed to be created:
  - (a) It will be illegal without the approval of the Town to:
    - (i) erect a gate in a fence that cannot be contained in the lot without the approval of the Town.
    - (ii) build a fence over a right of way, public access way or thoroughfare.
    - (iii) re-use fencing materials.
  - (b) It will also be illegal to use any following materials in fencing:
    - (i) broken glass or harmful projections
    - (ii) asbestos
    - (iii) materials that will collapse or fall
    - (iv) pre-used materials unless approved and treated.
16. These offences are accompanied by modified penalties based upon the seriousness of the offence. These offences are considered to be common sense (such as not building a gate outside your property) or for the safety of the public (ensuring fences do not collapse). It is proposed that these penalties be tied to the potential *Penalty Units Local Law 2020* and vary from \$250 to \$500.

### Next steps

17. In accordance with section 3.12 of the *Local Government Act 1995* prior to making any local law, the Town is required to give local public notice of the draft law and receive submissions from the public for at least six weeks.
18. Following the conclusion of the submission period, the local law will be resubmitted to Council for its consideration as to if it should be made.

## Relevant documents

AS/NZS 1170:0:2002 Structural design actions – general principles

AS/NZS 3016:2002 Electrical installations

[Local planning policy No.25 - Streetscape](#)

[Residential Design Codes Volume 1](#)