

LOCAL GOVERNMENT ACT 1995

City of Armadale

FENCING AMENDMENT LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995*, and under all other powers enabling it, the City of Armadale resolved on 14 April 2020 to make the following local law.

1. Citation

This local law may be cited as the *City of Armadale Fencing Amendment Local Law 2020*.

2. Commencement

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

3. Principal local law

This local law amends the *City of Armadale Fencing Local Law 2011* published in the *Government Gazette* on 8 December 2011 and as amended in the *Government Gazette* on 26 August 2016.

4. Clause 1.5 amended

Clause 1.5 is amended as follows—

- (a) the definition of **AS** is amended as follows—
 - (i) after “**AS**” insert “**or AS/NZS**”; and
 - (ii) after “means” insert “an”;
- (b) in the definition of **dangerous** after “glass,” insert “un-bonded”;
- (c) delete the definition of **dividing fence** and replace with “has the meaning given to it in the Act”;
- (d) the definition of **height** is amended as follows—
 - (i) delete “the top of the fence at any point and”;
 - (ii) in subclause (a) delete “the ground level or” and replace with “the top of the fence at any point; and”;
 - (iii) in subclause (b) before “where” insert “the ground level or.”;
- (e) in the definition of **lot** delete “and for the purpose of”;
- (f) in the definition of **owner** delete “and for the purpose of the *Dividing Fences Act 1961*” and replace with “the Act”;
- (g) the definition of **retaining wall** is amended as follows—
 - (i) delete “approved by the local government”; and
 - (ii) after “soil” insert “or retains soil or structures”;
- (h) the definition of **street setback area** is amended as follows—
 - (i) after “purposes of the” insert “State Planning Policy 7.3”; and
 - (ii) delete “Design Codes of Western Australia” and replace with “Design Codes”;
- (i) in the definition of **uniform fence** after “reserve,” insert “and”;
- (j) insert the following definitions in alphabetical order—

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

Schedule means a Schedule to this local law; and

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.

5. Clause 4.2 amended

In clause 4.2(3) delete “manufacture’s” and replace with “manufacturer’s”.

6. Clause 4.3 amended

Clause 4.3 is amended as follows—

- (a) in clause 4.3(1)—
 - (i) delete “On” and replace with “An owner or occupier of”;
 - (ii) delete “, a person”;
 - (iii) after “erect” insert “,” and delete “or”;
 - (iv) delete “to” and replace with “or allow to remain on”;
 - (v) after “fence” insert “on such a lot”;
- (b) in clause 4.3(2)—

- (i) delete “On” and replace with “An owner or occupier of”;
- (ii) delete “, a person”;
- (iii) after “erect” insert “,” and delete “or”;
- (iv) delete “to” and replace with “or allow to remain on”; and
- (v) delete “2m” and replace with “2000mm”;
- (c) delete clause 4.3(4) and replace with—
 - “(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.”
- (d) in clause 4.3(5)—
 - (i) delete “On” and replace with “An owner or occupier of”;
 - (ii) delete “, a person”;
 - (iii) delete “place or affix” and replace with “erect, affix or allow to remain any”; and
 - (iv) after “a fence on that” delete “Lot” and replace with “lot”.

7. Headings of principal local law amended

The principal local law is amended as follows—

- (a) in the heading of PART 5 after “**ELECTRIFIED**” insert “**AND RAZOR WIRE**”;
- (b) in the heading of clause 5.1 after “**Electrified**” insert “**and Razor Wire Fences**”;
- (c) in the heading of clause 6.1 after “Application” insert “for Approval”;
- (d) in the heading of clause 7.1 delete “breach” and replace with “Breach”;
- (e) in the heading of clause 7.2 after “Offences” insert “and Penalties”;
- (f) in the heading of Schedule 1 clause A after “**fence**” insert “,”;
- (g) in the heading of Schedule 1 clause B after “**sheeting**” insert “,”;
- (h) delete the heading in Schedule 1 clause E and replace with—
 - “**Colorbond metal, wrought iron, tubular steel or Duralok PVC fencing systems, which satisfies the following specifications—**”
- (i) delete the heading in Schedule 2 clause A and replace with—
 - “**PVC coated rail-less link mesh, chain mesh or steel mesh, which satisfies the following specifications—**”
- (j) delete the heading in Schedule 2 clause B and replace with—
 - “**Fences of timber, masonry (brick, stone or concrete), fibre cement, colorbond or Duralok PVC which satisfies the following specifications— ; and**
- (k) in the heading of Schedule 3 after “**LOT**” insert “, **SPECIAL RESIDENTIAL LOT**”.

8. Clause 5.1 amended

Clause 5.1 is amended as follows—

- (a) clause 5.1(1) is amended as follows—
 - (i) delete “On” and replace with “An owner or occupier of”;
 - (ii) delete “, a person”; and
 - (iii) after “fence” insert “or razor wire.”; and
- (b) in clause 5.1(2) delete “specification” and replace with “specifications”.

9. Clause 6.1 amended

After clause 6.1(2) insert—

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

10. Clause 6.3 inserted

After clause 6.2 insert—

“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)."

11. Clause 7.1 amended

Clause 7.1 is amended as follows—

- (a) in clause 7.1(1) delete "(infringement notice)"; and
- (b) in clauses 7.1(2) and 7.1(3) delete "An infringement notice" and replace with "A notice of breach".

12. Clause 7.2 amended

Clause 7.2 is amended as follows—

- (a) delete clause 7.2(1) and replace with—
 - "(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."
- (b) in clause 7.2(2)—
 - (i) delete "a maximum penalty of" and replace with "a penalty of not less than \$250 and not exceeding"; and
 - (ii) after "continuing offence," insert "to".

13. Clause 7.3 amended

After clause 7.3(2) insert—

"(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."

14. Clause 7.4 amended

Clause 7.4 is amended as follows—

- (a) in clause 7.4(a)—
 - (i) delete "a"; and
 - (ii) after "section" insert "9.16 and";
- (b) in clause 7.4(b)—
 - (i) before "infringement" insert "the withdrawal of".

15. Part 8 inserted

After Part 7 insert—

"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."

16. Schedule 1 amended

(1) Clause B is amended as follows—

- (a) in clause B(c) delete "manufacturers" and replace with "manufacturer's"; and
- (b) in clause B(d) after "area" insert ",".

(2) Clause C is amended as follows—

- (a) clause C(a) is amended as follows—
 - (i) delete "15MPA" and replace with "15MPa"; and
 - (ii) delete "20MPA" and replace with "20MPa";
- (b) clause C(b)(iii) is amended as follows—
 - (i) delete "15MPA" and replace with "15MPa"; and
 - (ii) delete "2.1m" and replace with "2100mm".

(3) Clause D is amended as follows—

- (a) in clause D(1)(a)—

- delete “15MPa” and replace with “15MPa”;
- (b) in clause D(1)(b)—
delete “85mm” and replace with “86mm”;
 - (c) in clause D(1)(c)—
delete “20MPa” and replace with “20MPa”; and
 - (d) in clause D(1)(e)—
delete “6m” and replace with “6000mm”.

17. Schedule 2 amended

Clause A is amended as follows—

- (a) in clause A(b) delete “3.5m” and replace with “3500mm”; and
- (b) in clause A(f) delete “3.6m” and replace with “3600mm”.

18. Schedule 3 amended

In Schedule 3 after “Special Residential Lot” delete “:” and insert “and land within the Development Area No. 1—”.

19. Schedule 4 amended

In Schedule 4 delete “:” and insert “—”.

Dated 14 October 2020.

The common seal of the City of Armadale was affixed by the authority of a resolution of the Council in the presence of—

R. BUTTERFIELD, Mayor.
JOANNE ABBISS, Chief Executive Officer.
