

LOCAL GOVERNMENT ACT 1995

CITY OF MELVILLE

FENCING LOCAL LAW 2025

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FENCING LOCAL LAW 2025

Under the powers conferred by the *Local Government Act 1995* and all powers enabling it, the Council of the City of Melville resolved on 15 July 2025 to make the following local law.

PART 1 — PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Melville Fencing Local Law 2025*

1.2 Commencement

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

1.3 Repeal

The *By-Laws Relating to Fences* published in the *Government Gazette* on 15 February 1985 is repealed on the day this local law comes into operation.

1.4 Application

- (1) This local law applies throughout the district.
- (2) This local law does not bind the City of Melville in relation to land owned by, vested in, or under the care, control or management of the City.

1.5 Definitions

In this local law, unless the context requires otherwise —

Act means the *Local Government Act 1995*;

authorised person means a person appointed by the CEO under section 9.10(2) of the Act to perform any of the functions of an authorised person under this local law;

~~**AS** means an Australian Standard as published by Standards Australia and as amended from time to time;~~

City means the City of Melville;

cycle path has the meaning given to it by the *Road Traffic Code 2000*;

dangerous, in relation to any fence, means —

- (a) an electrified fence other than a fence approved by the City under 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, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which, in the opinion of an authorised person, is likely to collapse or fall, or part of which is likely to collapse or fall, from any reasonably predictable cause;

district means the district of the City of Melville;

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

fence means any structure, not including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

footpath has the meaning given to it by the *Road Traffic Code 2000*;

front boundary means the boundary line between a lot and the thoroughfare upon which that lot abuts, or in the case of a lot abutting on more than one thoroughfare, the boundary line between the lot and the primary thoroughfare;

front fence means a fence erected on the front boundary of a lot or a line adjacent 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;

local government means the City of Melville;

local government property means anything except a thoroughfare —

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an ‘otherwise unvested facility’ under section 3.53 of the *Local Government Act 1995*;

local planning scheme means a local planning scheme made by the local government under the *Planning and Development Act 2005* that applies to the district or that part of the district in which the fence is located;

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

non-residential lot means a lot where the following uses, or like uses, is or may be permitted under the local planning scheme and is or will be the predominant use of the lot —

- (a) centre;
- (b) mixed use;
- (c) light industry;
- (d) service commercial; and
- (e) private clubs, institutions and places of worship;

occupier has the meaning given to it in the *Local Government Act 1995*;

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

public place includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include —

- (a) premises on private property from which trading is lawfully conducted under a written law; and
- (b) local government property;

residential lot means a lot where a residential use —

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

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

shared path has the meaning given to it in the *Road Traffic Code 2000*;

sufficient fence means a fence described in clause 2.1;

thoroughfare has the meaning given to it in the Act, and includes any carriageway, median strip, verge and path within the area bounded by the property lines of the lots abutting the thoroughfare, but does not include a private thoroughfare which is not under the management or control of the local government or the State;

1.7 Relationship with other laws

- (1) In the event of any inconsistency between the provisions of the local planning scheme and the provisions of this local law, the provisions of the local planning scheme prevail.
- (2) Nothing in this local law affects the need for compliance, in respect of a fence, with —
 - (a) any relevant provisions of the local planning scheme; and
 - (b) any relevant provisions that apply if a building permit is required for that fence under the *Building Act 2011* or *Building Regulations 2012*.

1.8 Public place – Item 4(1) of Division 1, Schedule 3.1 of the Act

The following places are specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act —

- (a) a public place, as that term is defined in clause 1.5 of this local law; and
- (b) local government property.

PART 2 – DIVIDING FENCES

2.1 Dividing fence must be a sufficient fence

A person may only erect a dividing fence —

- (a) which meets the specifications and requirements of a sufficient fence as outlined in clause 2.2; or
- (b) for a dividing fence separating non-residential lots, which conforms with a development approval given under the relevant provisions of the local planning scheme.

2.2 Meaning of a sufficient fence

- (1) For the purposes of the *Dividing Fences Act 1961*, a dividing fence is a sufficient fence if it is —
 - (a) on or near the boundary between two residential lots and is constructed and maintained in accordance with the specifications and requirements of Schedule 1;
 - (b) on or near the boundary between two non-residential lots and is constructed and maintained in accordance with the specifications and requirements of Schedule 2; or
 - (c) on or near the boundary between a residential lot and non-residential lot and is constructed and maintained in accordance with the specifications and requirements of Schedule 1.
- (2) Unless otherwise authorised by the local government, a sufficient fence between lots other than those specified in subclause (1) is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1.
- (3) A dividing fence lawfully erected prior to this local law coming into operation is also deemed to be a sufficient fence for the purposes of the *Dividing Fences Act 1961*.

PART 3 — FENCING WITHIN THE STREET SETBACK AREA

3.1 Sightlines at vehicle access points

- (1) On a residential lot comprising a single house or 3 or less grouped dwellings, a fence adjacent to any vehicle access point must —
 - (a) be truncated or reduced in height to no greater than 0.75m within 1.5m of where a driveway meets a public street; or
 - (b) contain no more than one solid pier to a maximum width of 0.35m and maximum height of 2.1m within the 1.5m truncation area. The solid fencing otherwise within the truncation area must be a maximum height of 0.75m and any fencing above 0.75m must have a surface area which is 80% open and free of obstructions to view.
- ~~(2) For all other lots, a fence adjacent to any vehicle access point must be truncated or reduced in height to no greater than 0.75m within the "sight triangles" identified in clause 3.2.4 (b) and Figure 3.3 of AS2890.1:2004.~~
- (2) For all other lots, in relation to fencing within sightline areas, a fence adjacent to a vehicle access point must either comply with the relevant Local Planning Policy or Residential Design Codes as applicable under the City's Local Planning Framework or seek Development Approval for a performance solution.

3.2 Gates in fences

- (1) A person must not install a gate in a fence which when open —
 - (a) may obstruct any part of a thoroughfare, footpath, cycle path or shared path, or
 - (b) may obstruct the vision of a vehicle driver, pedestrian or cyclist using a thoroughfare, footpath, cycle path or shared path,without first obtaining the written approval of the local government.

PART 4 — FENCING MATERIALS AND REQUIREMENTS

4.1 Prohibited fencing materials

- (1) In erecting or repairing a fence a person must not use —
 - (a) broken glass or any other potentially harmful projections or material;
 - (b) asbestos fibre; or
 - (c) material that is likely to collapse or fall, or part of which is likely to collapse or fall, from any reasonably foreseeable cause.
- (2) A person must not affix to any fence on a residential lot any —
 - (a) barbed wire;
 - (b) razor wire;
 - (c) material with spiked, sharp or jagged projections; or
 - (d) material capable of inflicting injury on any person, animal or bird.
- (3) A person must not erect an electrified fence on a residential lot.

4.2 Fencing materials requiring written approval

- (1) A person must not affix to any fence, on a non-residential lot, any —
 - (a) barbed wire;
 - (b) razor wire;
 - (c) material with spiked, sharp or jagged projections; or
 - (d) material capable of inflicting injury on any person, animal or bird,unless that person has the prior written permission of the local government.
- (2) A person must not erect an electrified fence on a non-residential lot, unless that person has the prior written permission of the local government.
- (3) A person must not erect a fence or repair a fence with anything other than new materials, unless that person has the prior written permission of the local government.
- (4) Where the local government approves pre-used materials in the construction of a fence under subclause (3), that approval shall be conditional on the applicant painting or treating the pre-used materials as directed by an authorised person.

4.3 Maintenance of fences

- (1) The owner of a lot on which a fence is erected must maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated or unsightly to the amenity of the locality.
- (2) Where a fence separates adjoining private land, each of the owners of the adjoining land are liable to maintain the fence as required in subclause (1).

PART 5 — APPROVALS

5.1 Application for approval

- (1) Where a person is required to obtain the approval of the local government under this local law, that person must apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law must —
 - (a) be made in the form determined by the local government;
 - (b) be signed by the applicant and the owner of the lot;
 - (c) provide the information required by the form; and
 - (d) be accompanied by any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to, within 21 days, provide additional information reasonably related to an application before determining an application for approval.
- (4) The local government may refuse to consider an application for approval —
 - (a) which is not made in accordance with subclause (2); or
 - (b) where the applicant has not provided any additional information required under subclause (2).
- (5) A person must not provide false or misleading information in relation to any application for approval under this local law.

Note: Part 5 applies to approvals under sections 3.2 and 4.2 of this local law.

5.2 Decision on application for approval

- (1) The local government may, in respect of an application made under clause 5.1 —
 - (a) approve it, whether unconditionally or subject to any conditions as the local government considers appropriate; or
 - (b) refuse to approve it.
- (2) The local government must decide whether or not to approve an application within 21 days.
- (3) In determining whether to grant approval under subclause (1), the local government is to have regard to any adverse effect the proposed fence would have on —
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; and
 - (c) the visual amenity of the locality.
- (4) Where the local government refuses to approve an application for approval, it must give written notice of the decision, together with grounds and reasons, to the applicant.
- (5) Where the local government has not made a decision within the time mentioned in subclause (2), it is taken to have refused to give approval, and any fee payable under subclause (2)(d) is to be refunded to the applicant.

- (6) The local government may, at any time, amend a condition of approval, and the amended condition takes effect 14 days after written notice of it is given to the applicant.

5.3 Compliance with approval

Where an application for approval has been approved, the applicant and the owner or occupier of the lot to which the approval relates must comply with the terms and conditions of that approval.

5.4 Duration of approval

- (1) Unless otherwise stated in the form of approval, an approval granted under this local law —
 - (a) runs with the lot to which it relates;
 - (b) may be relied on by any subsequent owner or occupier of the lot; and
 - (c) may be enforced by the local government against a subsequent occupier or owner of the lot.

5.5 Revocation of an approval

- (1) The local government may, by written notice to the applicant and the owner of the lot to which the approval relates, revoke an approval where any works the subject of the approval are not completed within two (2) years of the date of approval.
- (2) Where an approval is revoked pursuant to subclause (1), it ceases to be of any force and effect.

PART 6 — ENFORCEMENT

6.1 Legal proceedings and evidence

Provisions relating to legal proceedings and evidence are contained in Subdivision 3 and 4 of Division 2 of Part 9 of the Act.

6.2 Notices 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 ('notice of breach').
- (2) The notice of breach must —
 - (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach;
 - (c) state the actions that the owner must undertake to remedy the breach; and
 - (d) state the time by which the actions in the notice must be completed.
- (3) An owner given a notice of breach must remedy the breach within the time specified in the notice.
- (4) Should an owner fail to remedy the breach within the time specified in the notice, 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 doing so from the owner of the lot in a court of competent jurisdiction.
- (5) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the Act, and any entry on to land must be in accordance with Part 3, Division 3 of the Act.

6.3 Offences and general penalty

- (1) A person who fails to comply with a notice of breach, or 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) Any person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000 and, if the offence is a continuing offence, to an additional penalty not exceeding \$500 for each day or part of the day during which the offence has continued.

6.4 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 Act.
- (2) In accordance with section 9.16 of the Act, an authorised person who has reason to believe that a person has committed an offence against this local law may, within 28 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (3) In accordance with section 9.17 of the Act, a person who does not contest an allegation that he or she has committed offence against this local law may, within

the time specified in an infringement notice or within such further time as may, in any particular case, be allowed by the CEO, pay the modified penalty for that offence which, in accordance with section 9.21 of the Act, has the effect of preventing the local government from commencing a prosecution for the alleged offence.

- (4) The amount appearing in the final column of Schedule 3 directly opposite a prescribed offence in that Schedule, is the modified penalty for that offence.
- (5) Provisions relating to modified penalties in general are contained in Subdivision 2 of Division 2 of Part 9 of the Act.

6.5 Form of notices

- (1) For the purposes of this local law —
 - (a) the form of infringement notice referred to in sections 9.16 and 9.17 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
 - (b) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

6.6 Objection and appeals

- (1) When the local government makes a decision under clause 5.2, the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* apply to that decision.

Schedule 1 – Sufficient Fence – Residential Lots

- (1) This Schedule does not apply to a front fence.
- (2) On a residential lot, a sufficient fence is a dividing fence that —
 - (a) is constructed of —
 - (i) timber pickets or palings;
 - (ii) masonry (including brick, stone or concrete);
 - (iii) factory-coloured sheet metal posts and panels; or
 - (iv) any combination of the materials described in paragraphs (i)-(iii); and
 - (b) is between 1.8m and 2.3m in height.

Schedule 2 – Sufficient Fence – Non-Residential Lots

- (1) This Schedule does not apply to a front fence.
- (2) On a non-residential lot, a sufficient fence is a dividing fence that —
 - (a) meets the specifications of Schedule 1; or
 - (b) is constructed of —
 - (i) a galvanized or PVC steel frame and galvanized or PVC link mesh, chain mesh or steel mesh; or
 - (ii) painted or galvanized steel or aluminium sheeting; and

is between 1.8m and 2.3m in height.

Schedule 3 – Modified Penalties

Item	Clause	Nature of Offence	Modified Penalty \$
2	3.1	Constructing a front fence adjacent to a vehicle access point without an adequate truncation.	\$250
3	3.3 3.2	Installing a gate in a fence that causes an obstruction when open.	\$250
4	4.1(1)	Affixing prohibited materials to a fence.	\$500
5	4.1(2) 4.1(3)	Erecting an electrified fence on a residential lot.	\$500
6	4.2(1)	Constructing or repairing a fence with restricted materials without the permission of the local government.	\$500
7	4.2(2)	Erecting an electrified fence on a non-residential lot without the permission of the local government.	\$500
8	4.2(3)	Constructing or repairing a fence with pre-used materials without the permission of the local government	\$250
9	4.3	Failure to maintain a fence in a good condition.	\$250
10	5.1(5)	Providing false or misleading information in relation to an application for approval.	\$250
11	5.3	Failure to comply with terms or conditions of approval.	\$500
12	6.2(3)	Failure to comply with notice of breach.	\$500

21 July 2025
The Common Seal
of the **City of
Melville** was affixed
by authority of a
resolution of
the Council in the presence of:

Karen Wheatland
Deputy Mayor

Gail Bowman
Chief Executive Officer