

This written submission of the City of Melville Residents and Ratepayers Association (MRRRA) is in response to the Head of Governance, Ms Corrine Newman's, report on item C25/293 Proposed City of Melville Fencing Local Law 2025 as included in the [Agenda for the July 15, 2025 Ordinary Meeting of Council](#).

The MRRRA asks Council to:

Reject, on the grounds that the proposed Local Law is *"likely to have a significant adverse economic impact on stakeholders"*, the Responsible Officer's Recommendation to authorise the Chief Executive Officer (CEO) to progress the process to enactment of the proposed Fencing Local Law 2025.

Replace the Responsible Officer's recommendation with motions to the give effect to:

- 1) The CEO arranges for an independent "Regulatory Impact Assessment" be provided to Council to inform Council of the likely impacts arising from application of this proposed Fencing Local Law as guided by the WA Government at <https://www.wa.gov.au/organisation/department-of-treasury-and-finance/better-regulation-regulatory-impact-assessment>.
- 2) Mayor Mair formally requesting, on behalf of the full Council, the Department of Local Government, Industry Regulation and Safety (**LGIRS**) Director General, Ms Lanie Chopping, and Department of Planning, Land and Heritage (**DPLH**) Director General, Mr Anthony Kannis, to provide reports on the interrelationships and impacts from the State Legislation their Departments are responsible for, being Local Government, building legislation, the Dividing Fences Act, the planning and development legislation, resident feedback, and City of Melville Administrations C25/293 report and proposed amendments.
- 3) The CEO be directed to provide a report to Council outlining how the proposed Fencing Local Law amendments and Council's Compliance and Enforcement Policy will benefit the community; including reducing the number and significance of disputations between residents about boundary structures and fencing, including dividing fences, boundary retaining walls and a summary of past disputes the City is aware of.
- 4) The CEO be directed to form a community reference group (CRG) or community based committee (CC), as the Local Government Act Section 5.8 allows, to assist Council in its decision making and enable the Administration to properly conduct a customer focused review of the proposed Fencing Local Law amendments to deliver a community committee report to inform Council further review of proposed amendments by November 2025 OMC. The CRG or CC should consist of any learned residents with fence experience. The CRG or CC must consider any reports provided by LGIRS, DPLH and the CEO.
- 5) Council to consider the proposed Fencing Local Law amendments post CRG or CC by February 2026 Ordinary Meeting of Council.
- 6) The CEO to be directed to amend the City's Web site to include a single page directory identifying all proposed changes to policy, local laws and other processes, procedures and standards which impact stakeholders.

Reasons

- The proposed Fencing Local Law amendments will have a significant impact on substantially **all** members of the community.
- Elected Members should be guided by the Local Government Act section 1.3(2);
 - (a) better decision-making by local governments; and
 - (b) greater community participation in the decisions and affairs of local governments; and**
 - (c) greater accountability of local governments to their communities; and**
 - (d) more efficient and effective local government.
- Elected members be guided by State Government best practice "Regulatory Impact Assessment" <https://www.wa.gov.au/organisation/department-of-treasury-and-finance/better-regulation-regulatory-impact-assessment>
- A November 29, 2023 City of Melville response to the Department of Local Government, Sport and Cultural Industries' governance concerns stated its objectives:
 1. *Development of a new Council-Led Corporate Business Planning and Budget Process;*
 2. *Lead Improved Governance;*
 3. *Support improved rating, financial reporting and financial planning to ensure ongoing financial sustainability;*
 4. *Lead Improved culture - in areas of Accountability, High Performance and customer centricity;*
 5. *Lead sustainable population growth and planning improvement.*

*The City is entering a new era and has committed itself to a significant change agenda to align itself with a Council **and Community led**, financially sustainable strategic direction, with improved internal accountability, in particular in the areas of governance.*

The MRRRA's opinion is that the City's approach to community consultation in relation to this item is inadequate, including lacking the required "customer centricity", amongst other things.

- Council's Fencing Local Law has significant interrelationships and impacts on State Legislation (local government, building, planning and development legislation and the Dividing Fence Act. Council should not decide on the proposed Fencing Local Law prior to considering express advice, comments, and endorsement from at least LGIRS and DPLH to ensure the proposed local law does not attempt to contradict state legislation.
- Only less than 18% of the submissions provided unqualified support. This does not reflect community support. Council should not accept this low level of support. Part of reason for the low public submission rate is the inadequacy of simple and open access to proposals not being identifiable on the home page of the City's website.
- In our opinion the C25/293 report does not adequately respond to, or address all the community's feedback, especially our March 2, 2025 submission, as attached below.
- The MRRA acknowledges the City did act on one of our serious concerns (our point 4) in relation to the proposed fence definitions. The City has rightfully removed the inappropriate inclusion of "living hedge" and "retaining walls" from its definitions; notwithstanding the revised definitions needs further review to ensure retaining walls are expressly excluded.
- The MRRA is concerned with the Administration's response to, for example, submission 9 (page 143), which states *"Concerns around the quality of fencing installs are a civil matter between the property owner and the person or business that owner has contracted to install the fence. If a property owner is not satisfied with a contractor's work, they should raise this directly with the contractor. If the parties cannot come to a resolution, the property owner may wish to make a formal complaint to Consumer Protection or the Department of Building and Energy."* In the MRRA's opinion this demonstrates that the City is attempting to distance itself from taking appropriate compliance and enforcement action in relation a Council local law.
- The MRRA is deeply concerned with the Administration' response to another of our comments (point 6, amongst others) in relation to the rights of the application and third parties (neighbours) review of any of the Administration's Fencing Local Law decisions. The Administration's response (page 154) *"The City takes on board the feedback that more information could be available about this Part 9 review mechanism. This work is outside the scope of this project and will be addressed separately"*, is inadequate. Council should not accept this response, which related to a significant and important control over the Administration's decision making for the benefit of all community members.
- The MRRA still object to the increase of height from 1.8 m to 2.3 m, and believes extra heights should be dealt with under the Planning and Development Act processes (ultimately height increased above 1.8 m with the affected neighbours' consent).
- There has been no reference in the U25/293 report quantifying or qualifying the City's experience and analysis of successes or failures in relation to fencing control applications. The report has not quantified let alone analysed any history of fencing/dividing disputes and issues within the City or estimation of the community benefits expected from the proposed amendments. Council should not accept the proposed changes without a clear business case.
- In short, the MRRA objects to the proposed Fencing Local Law amendments in its current form.
- The MRRA view is that despite the wholesale proposed changes to the wording of the existing Fencing Local Law, better and more specific, objective and definitive guidance to the CEO is required if the Local Government and its community are to benefit from this policy. Rather, it is possible that the proposed changes may just make it easier for the Administration to support even more subjective and biased decisions it may want to make at any time.
- The MRRA continues to offer to assist as we believe Council would benefit from advice from an experienced/qualified CRG or CC.
- The MRRA asks council to replace the Head of Governance recommendation for the reasons above.

Attachments:

- MRRA March 2, 2025 Submission on proposed Fencing Local Law amendments

This submission is in response to the City of Melville administration's (Administration) [request for feedback on its proposed 2024 changes to the Fencing Local Laws](#) (Proposed Amendments)

It is recommended Council reject the Proposed Amendment pending further investigation, focused interactive community engagement, proper justification and a business case.

The Administration has previously taken the position it would not get involved in dividing fence matters as it was a matter between neighbours. The Proposed Amendments further embed the right for Council to make decisions in relation to non-standard dividing fences, but apparently without clear consideration of adjoining property owners. It is feared that this may lead to even more disputes between neighbours, and unnecessary costs and harm to residents.

The Proposed Amendments are significant. Inadequate information has been provided to explain, support and justify the Proposed Amendments.

Section 24 of the [Dividing Fences Act 1961](#) states: "A local government shall, when required by the Minister so to do, make a local law prescribing what constitutes a sufficient fence for the purpose of the definition of sufficient fence in section 5". This is given in Schedules 1 and 2 of the Proposed Amendments.

The Proposed Amendments go well beyond the requirement for Council to specify the minimum requirements of a sufficient fence. The Administration has re-enforced significant approval processes and enforcement powers of the City. The additional provisions are not seen to be in the interest of the ratepayers and appear to be more unnecessary and convoluted red tape that will create further confusion.

The State Government has an objective of simplifying and homogenizing local governments local laws and processes. The Proposed Amendments appear contrary to the State Government's objectives.

The following non-exhaustive list of the most significant comments are provided:

1. The Administration has not provided any information or justification for the need to make the various material changes in the Proposed Amendments. That is, what the nature and frequency of existing underlying problems, issues and resident feedback is that has prompted the proposed changes. The City should be clear on how much the changes with cost (ie other consequential changes and impacts, and implementation time and cost, compliance and enforcement effort required), and how they think the changes will benefit residents and reduce the Administration's recurring costs.

Additional information that should be provided, at the very last, is details and the circumstances, as to how the Administrations have exercised their delegated authorities in relation to the existing Fencing Local Law for at least the last 10 years.

2. The Administration has highlighted that fencing is addressed in the Dividing Fences Act 1961, the Local Planning Scheme and Local Planning Policies (Planning and Development Act 2005, R-codes), and the Building Act 2011 ([particularly the work affecting other land section](#) that deals with fencing) and associated regulations.

However, the City has not provided an analysis of the interactions, inconsistencies, overlaps and impacts of the Proposed Amendments with respect to all relevant State legislation. There is a real risk that the Proposed Amendments increase the legal complexity and real confusion amongst residents and others with respect to approvals and enforcement of the superior regulation as already routinely observed at Melville. Council should, at the very least, seek feedback guidance on the Proposed Amendments from the DEMIRS who are responsible for the Dividing Fences and Building Acts. This information, at the very least, should be made public to enable the community to make properly informed comments before Council makes any decisions.

3. The Proposed Amendments appear materially different or inconsistent with fencing local laws introduced by several other local governments. Council should seek to simplify the local laws and not deviate from the common minimalist practices of other local governments. Council should direct the Administration to assess the Proposed Amendments with other localities and best practice, having regard for the superior State Government legislation.

4. The Administration has materially changed the definition of a fence from:

From Melville 2011 fences local law:

“**Dividing Fence** is any wall, fence or similar such structure, irrespective of material content, located on or near a common boundary of adjoining land or on a line other than the common boundary, and includes a front fence to a property, but does not include any retaining wall structure.”

“**Fence** shall have the same meaning as a "Dividing Fence".”

To 2024 Proposed Amendment

“**fence** means any structure comprising any material or mixture of materials, or any living hedge, placed and maintained so as to create a barrier between areas of land, and includes any non-retaining wall or any gate but does not include a retaining wall unless it is required to support the fence”

This is a material and potentially far-reaching change. The Administration have, or it could be interpreted to have, now included retaining walls and living hedges in the fence definition.

The City has copies of Magistrates Court decisions, and other advice, that clearly state that retaining walls do not fall within the jurisdiction of the Dividing Fences Act. The new definition is ambiguous and will likely accentuate confusion and opportunities for the Administration to make more subjective decisions.

There is no clarity on what a living hedge is or is not. This could be easily interpreted as that residents cannot have hedges or other vegetation above the approved fence heights along the boundary, something many people have for amenity, privacy, bird life and tree canopy. It is inconceivable that the Proposed Amendments could be interpreted to mean Melville will have the power to order ratepayers to prune boundary vegetation back down to the approved height.

By way of reference the [City of Wanneroo’s 2021 fencing local law](#) definition for fence is: “**fence** means any structure, not including a retaining wall, that is used or functions as a barrier, irrespective of where it is located, and includes any gate”. Council should revert to this definition.

It is noted, as confirmed by SAT precedents, the Building Act requires near boundary retaining of any height to be the subject of a building approval in certain circumstances. This suggests that retaining walls should not in any way be included or even suggested in the definition of a fence.

5. The Administration has lifted the allowable height of the fence from 1.8 m to 1.8 to 2.3. The City has not provided any reasons or justification for the increased heights. The additional height may create detriment to many ratepayers that want to protect their amenity and maximize light and airflow to their homes. Ratepayers may not want to be closed in at the will of their neighbours and the Administration.

The City currently handles request for over height dividing fences through its existing development approvals process, which gives regard to neighbour feedback, the R-Codes, Local Planning Scheme and Local Planning Policies, and issues enforceable and reviewable development and subsequent building approvals. There appears no justification to change this approach if anyone wishes to build a boundary/diving fence over 1.8 meters high.

Further it is likely that custom fencing over 1.8 m high (the norm for commercial off the shelf pre-engineered fencing solutions) would require a building approval under the Building Act due to ensure compliance with structural integrity, other building codes and other relevant Australian Standards.

Council should stick with existing planning and building approvals processes for fencing over 1.8 m high. The Administration has not provided any case for change.

6. The Administration has beefed up the approvals and enforcement processes in the Proposed Amendments, rather than simplifying them in the context of other Council processes.

The Administration is proposing Council has the right to not only “approve” fencing, but also the right to change those approvals up to including revoking them at any time in the futures. These broad and deep powers that are open to abuse. It is unacceptable the Administration has the delegated authority to change or revoke approvals unilaterally at any time.

Whist the Proposed Amendments have provisions for an applicant’s right of review, this review process is not clear and does not appear to give regard to affected third party adjoining property owners.

The Administration should not have un-fettered rights and powers to approve and enforce without adequate Council oversight and affected ratepayer review rights.

The Administration has referenced Part 9 Division 1 of the Local Government Act at the appeal process. However, the Administration has not provided any detail on how that objection or appeal process will work, that is how will “The objection [by the applicant and the adjoining property owners] is to be dealt with by the council of the local government or by a committee authorised by the council to deal with it.” There appears to be limited information on the processes that appears to have been rarely used at Melville, if at all.

The Administration should provide more detail of what appeals under Part 9 Division 1 of the Local Government Act have been received and dealt with by Council since 2012 (when the Building Act was introduced).

7. The Administration has not provided any clarity on what the “approvals” processes looks like, in what form it would take, how much it will cost residents, and how much it would cost for the City to administer another bespoke process.

The City’s website currently has [one document providing guidance in relation to approval of New Fences \(New Front or Dividing Fence, Boundary Wall, Screen Wall, Barrier or the like\)](#). This clearly utilizes the State’s Building Act processes.

No detail has been provided in relation Council Fees and Charges, if any.

8. The above “approvals” and “appeals” comment have been made without prejudice to the Proposed Amendments “approvals” and enforcement processes should be scrapped in favour of clarifying the pathway to existing and well establish State guided planning and building approvals and review processes.
9. The Penalties associated with these matters appear punitive, for what be a simple process about dividing fences. Penalties will not solve any fundamental issues with boundary/dividing fencing non-compliances. Council enforcement powers should be limited only to instances where boundary fencing is non-compliant with the requirements for sufficient fence, or is otherwise non-compliant, dangerous and in need of repair in the event that a property owner refuses to act to rectify any non-compliances of their own accord, and only where such powers do not already exist under the Planning and Development or Building Acts.

Then, if after clear direction from the City (which should be reviewable) the owner still refuses to remedy any non-compliances, Council should have the right to undertake the necessary work to ensure the fencing is compliant at the property owner’s cost, as is already allowable under other State legislation.

10. It is also noted that Proposed Amendments Schedule 1 – Sufficient Fence – Residential Lots states a sufficient fence can be constructed with masonry, that is bricks, stone or concrete. It should be noted that it is very likely that such a fence would need an approval under the Building Act, and thus this highlights a possible area of confusion to the normal resident. That is existing planning and building approvals processes already apply for such masonry fences.
11. These opinions are provided in good faith based on the scant information provided by the Administration, with additional research, with the intention of assisting Council in making properly informed decisions in the public interest and for the benefit of the community.