

# Dividing, boundary fences and privacy screens

## What is a dividing fence, boundary fence and privacy screen?

A 'dividing fence' is usually a fence that separates two privately owned properties. It does not include a fence running along the boundary of a road and it does not include a retaining wall.

A 'boundary fence' is a fence installed between a privately owned property a public open space or other reserve. It also does not include a fence running along the boundary of a road and it does not include a retaining wall.

A 'privacy screen' is a fence inside a fence and must be a minimum of 100mm from the dividing fence.

The information contained in this factsheet does not apply to fences that adjoin a street boundary. Refer to the Front and Secondary Street Fences fact sheet for further information.

## What is a sufficient fence?

The *Dividing Fences Act 1961* states that land that adjoins other land is to be divided by a fence of a type prescribed by the local government (a sufficient fence).

The *City of Joondalup Fencing Local Law 2014* defines a sufficient fence as:

*'A fence constructed of corrugated fibre reinforced pressed cement and erected in accordance with manufacturer's specifications and which satisfies the following specifications:*

- *A minimum in-ground depth of 25% of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600 millimetres.*
- *The total height and depth of the fence to consist of a single continuous fibre reinforced cement sheet.*
- *The sheets to be lapped and capped with extruded snap-fit type capping in accordance with the manufacturer's written instructions.*
- *The height of the fence to be 1.8 metres except with respect to a fence within the street setback area.'*

Disputes relating to dividing fences (including alterations without a neighbour's consent) is a civil matter between two parties, with the *Dividing Fences Act 1961* providing a mechanism for courts to deal with disputes over dividing fences. In a civil court action the Magistrate will use the City's Local Law to determine what is considered a sufficient fence and will use those laws in making their determination.

## My boundary fence adjoins land used for public purposes. Can I still erect a 1.8 metre high fence and who is liable for costs?

The *Dividing Fences Act* does not apply to the Crown (government) or to land used for public purposes such as road reserves and paths under the control of local governments. This means that if your property adjoins such land you have to pay the full cost of the dividing fence.

Residential sites that adjoin public spaces and/or public access ways are subject to the design criteria of the City's *Subdivision and Dwelling Development Adjoining Areas of Public Space Policy*.

Generally, a boundary fence abutting public space on a residential site are subject to the following design criteria:

- A maximum height of 1.8 metres;
- Visually permeable above 1.2 metres, as measured from natural ground level for a minimum of 50 per cent of the boundary length; and
- Allow surveillance from an outdoor living area and/or major opening (window to living areas).

Generally, a boundary fence abutting a pedestrian accessway on a residential site are subject to the following design criteria:

- A maximum height of 1.8 metres; and
- Visually permeable above 1.2 metres, as measured from natural ground level, the greater of the street setback area (as stipulated in the *Residential Design Codes of Western Australia*), or the setback of the front of the dwelling closest to the common boundary.

Should the site be located within a structure plan area, additional and/or augmented requirements may apply.

## I want to build or replace my existing dividing fence. What are my obligations?

Owners looking to construct a dividing fence are strongly advised to find out their obligations and responsibilities as defined in the *Dividing Fences Act 1961* (Act) prior to the construction of a fence.

A booklet titled *Dividing fences a guide* is available from the Building Commission website at [buildingcommission.wa.gov.au](http://buildingcommission.wa.gov.au) This also contains the contact details should you require further assistance.

## I want to erect a dividing fence that is higher than a sufficient fence?

Any dividing fence more than 1.8 metres in height requires agreement with the adjoining neighbour (in the form of written neighbours consent) and a building permit.

If you wish to have a dividing fence replaced completely by a different type of fence, you should give the adjoining owner a notice describing the kind and extent of fence to be made.

## What can I do to repair or replace an existing fence?

The Act provides for owners of land on either side of the fence to join in or contribute in equal proportions to the repair of the fence. This applies to both developed and vacant land.

The Act defines the word 'repair' as including 'realign' and 're-erect' so the provisions which deal with repairing a dividing fence also apply in the same way to fences which need realignment or re-erection.

The replacement of an existing fence with an entirely different type of fence, for instance replacing a damaged old picket fence with a new fibrous cement fence, is not a repair.

## Do I need a building permit for a dividing fence?

The *Building Permit Regulations 2012*, Schedule 4, Clause 2 – Item 4 states that:

Construction, erection, assembly or placement of a fence, screen or similar structure, other than a fence forming part of a barrier to a private swimming pool, if —

- (a) the fence, screen or similar structure is constructed in accordance with a local law made under the *Local Government Act 1995* section 9.60 that applies to the construction of the fence, screen or similar structure in the district in which the fence, screen or similar structure is, or is to be, located; or
- (b) the fence, screen or similar structure is, or is to be, located in a district in which there is no local law of a type referred to in paragraph (a) and the fence, screen or similar structure —
  - (i) if constructed of masonry, is no more than 0.75m in height; and
  - (ii) if constructed of a material other than masonry, is no more than 1.8m in height; and
  - (iii) is not located in wind region C or D as defined in AS1170.2.

Fencing that does not meet any of (a) or (b) will require an application for building permit. For example, any fencing over 1.8 metres in height will require a building permit. A brick fence 0.75 metres or higher will also require a building permit.

## How do I make application for a building permit?

Building permit application forms (certified or uncertified) are available from the Building Commission's website [buildingcommission.wa.gov.au](http://buildingcommission.wa.gov.au).

Certified building permit applications must be accompanied with a Certificate of Design Compliance.

Please refer to the City's Uncertified Building Application Checklist – Fences including front, dividing, boundary and privacy screens (Class 10b) for information required to be provided with the Building Permit Application (BA2 form).

Fees are in accordance with the Building Services Schedule of Fees.

## Will I need a development (planning) application?

Development approval is only required for a boundary/dividing fence if the proposed fencing does not comply with the requirements of a local planning policy or a structure plan.

Development approval is required for privacy screen if the proposed fencing exceeds 2.3 metres from natural ground level.

Application forms, development application checklists and further information on the development application process is available on the City's website at [joondalup.wa.gov.au](http://joondalup.wa.gov.au).

Fees are in accordance with the Planning Services Schedule of Fees.

## If my fence forms part of my swimming pool barrier, what are the requirements?

Your fence will need to comply with AS1926.1 swimming pool safety. Please refer to the City's Safety Barriers for Private Swimming Pools and Spas fact sheet.

## How do I liaise with my neighbour regarding a dividing fence dispute?

It is suggested you liaise with your neighbour verbally and follow up any agreements in writing relating to a dividing fence dispute. Example letters may be found on the Building Commission website at [commerce.wa.gov.au](http://commerce.wa.gov.au)

## Mediation

The City is unable to direct your neighbour to construct a sufficient fence and has no statutory ability within the Act to direct or provide adjudication of costs or repairs. A free mediation service is offered by the City when agreement can't be reached.

If you would like to use this service contact the City on **9400 4942**.

## What can I do if I've tried mediation and can't reach agreement?

The Magistrates Court deals with applications by the owners of adjoining lands for the construction and repair of a dividing fence.

A 'Form 53', available from the Magistrates Court, is used to make an application to the court in these circumstances in default of an agreement, or where an owner of adjoining land cannot be found.

## How do I find the owner of the property next door?

If you do not know the name of the owner of the property next door to you, you can:

- Check with the tenants or property manager if the property is rented or leased;
- Do a land title search through the Landgate website at [landgate.wa.gov.au](http://landgate.wa.gov.au); or
- Contact the City's Rating Services and request neighbours details in relation to a dividing fence matter on **9400 4574**.

## What is involved if I wish to remove my asbestos fence?

Left undisturbed, asbestos cement building products pose little risk to health, so there is no need to remove or coat asbestos cement materials that are in good condition.

If you wish to have an asbestos dividing fence replaced completely by a different type of fence, you should give the adjoining owner a notice describing the kind and extend of fence to be made.

In this case, if the asbestos fence is undisturbed and not in need of replacement you will be liable for the full cost of the new fence.

All asbestos cement products can be removed safely without causing a risk to the public or workers provided safe work procedures are followed.

Further information of the safe removal and disposal of asbestos cement products can be found on the City's website at [joondalup.wa.gov.au](http://joondalup.wa.gov.au) or contact the City's Health and Environmental Service on **9400 4933**.