

Dividing Fences, Boundary Fences and Privacy Screens

What is the difference between a dividing fence, a boundary fence, and a 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 that is installed along a street or public open space or reserve.

A privacy screen is a fence that is a minimum of 100mm inside a dividing fence.

What is a sufficient fence?

The *Dividing Fences Act 1961* (the Act) 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's *Fencing Amendment Local Law 2021* defines a sufficient fence as:

A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which otherwise satisfies the following specifications:

- Minimum in-ground length of 25% of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm.
- The total height and depth of the fence to consist of a single continuous fibre reinforced cement sheet or steel 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 1800mm from natural ground level except with respect to a fence within a street setback area which is subject to the relevant provisions of the *Residential Design Codes*.

The sufficient fence requirements of the Local Law are for the purposes of defining a sufficient fence under the Act.

Disputes relating to dividing fences (including alterations without a neighbour's consent) is a civil matter between two parties, with the Act providing a mechanism for courts to deal with disputes over

dividing fences. In a civil court action, the Magistrate will refer to 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 high fence and who is liable for costs?

The Act does not apply to the Crown (government) or to land used for public purposes, such as roads and paths under the control of local governments. Therefore, if your property adjoins such land you are responsible to pay the full cost of the dividing fence.

Properties that adjoin public spaces and/or public access ways must meet the design criteria of the City's *Subdivision and Dwelling Development Adjoining Areas of Public Space Policy*. A Development (Planning) Application may be required to be made to the City should your proposed fence not meet the requirements of this policy. The policy is available for viewing on the City's website at joondalup.wa.gov.au

Any increase in the boundary fence height from 1.8m requires a building permit.

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 Act, prior to the construction of a fence.

Refer to Dividing fence matters - overview from the Department of Mines, Industry Regulation and Safety (DMIRS)'s website at commerce.wa.gov.au/building-and-energy which provide detailed information on owner responsibilities.

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

Any dividing fence more than 1.8m in height requires agreement with the adjoining neighbour (in the form of written neighbour's 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.

You may be liable for the full cost of the new fence.

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, accordingly, 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.

Will I need a development (planning) application?

A development (planning) application is only required for a boundary/dividing fence if the proposed fencing does not comply with the requirements of a local planning policy or structure plan.

A development (planning) application is required for a privacy screen that exceeds 2.3m from natural ground level.

Application forms, development application checklists and further information on lodging an application are available on the City's website at joondalup.wa.gov.au

It is also recommended that you speak to your neighbours that may be impacted by the fence or screen and request them to sign the plans as a way of their consent to its development.

Will I need a building permit for a dividing fence?

A building permit is not required when the fencing, screen or similar structure (other than a fence forming part of a barrier for a private swimming pool) complies with all of the following:

- The structure is constructed in accordance with City's *Fencing Amendment Local Law 2021*;
- The structure if constructed of masonry is no more than 0.75m in height; and
- The structure if constructed of a material other than masonry, is no more than 1.8m in height.

How do I make an application for a building permit?

Building permit application forms, building application checklists and information on lodging an application are available on the City's website at joondalup.wa.gov.au

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

Your fence will need to comply with Australian Standard *AS1926.1 Safety Barriers for Swimming Pools*. 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 DMIRS website at commerce.wa.gov.au/building-and-energy

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. However, the City provides a free Community Mediation Service where agreement cannot be reached.

For further information, please refer to the City's website at joondalup.wa.gov.au or call **9400 4000**.

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 is available from the Magistrates Court and 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?

Maintaining verbal communication with your neighbour during dividing fence disputes is advised as the most effective method of communication, however, if the property is not occupied by the owner, you may:

- Check with the tenants or property manager if the property is rented or leased.
- Conduct a land title search through the Landgate website at landgate.wa.gov.au

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 of fence you are proposing.

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, unless otherwise agreed with the affected property owner/s.

All asbestos cement products can be removed safely without causing a risk to public health 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**

Note that WorkSafe WA have requirements for handling and working with asbestos, including licensing requirements. Please refer to **commerce.wa.gov.au** for further information.

Further information

For further information please visit **joondalup.wa.gov.au**, via email **info@joondalup.wa.gov.au** or call **9400 4000**.

Visit the Customer Care during office hours **Monday - Friday, 8.30am - 5.00pm**.