

Dividing Fences

What is the difference between a dividing fence and a street fence?

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 street wall or fence is a wall, screen or barrier that fronts a street boundary and is in the primary street area (normally anywhere in front of a dwelling). This includes fencing on the side boundaries in the street setback area. For further information about street walls and fences in the City of Stirling, please refer to the City's [Street Walls and Fences Information Sheet](#).

What is a sufficient fence?

The *Dividing Fences Act 1961* (the Act) defines a dividing fence as a fence that separates the lands of different owners. The Act enables local laws to be created which outline the minimum standards of a sufficient fence.

The City of Stirling's [Fencing Local Law 2008](#) is available on the City's website and its requirements are designed to define a sufficient fence under the Act.

Although the City has a Local Law which outlines the standards for a sufficient fence, disputes relating to dividing fences are a civil matter between two neighbours. The Act provides a mechanism for courts to deal with disputes over dividing fences. In a civil court action, the Magistrate will also refer to the City's *Local Law* to determine what is considered a sufficient fence.

My dividing fence adjoins City owned land. Who is liable for the cost?

The Act does not apply to the government or to land used for public purposes, such as roads, rights-of-way, paths and reserves under the care and control of the Local Government. Therefore, if your property adjoins land used for public purposes, you are responsible to pay the full cost of the fence.

I want to build a dividing fence. What are my obligations?

The City encourages owners looking to construct a dividing fence to find out about their obligations and responsibilities, as defined in the Act, prior to construction.

The Department of Mines, Industry, Regulation and Safety (DMIRS) has produced a useful booklet titled [Dividing fences a guide](#) and further information is also available on the [DMIRS](#) website.

The next step is to discuss your proposal with your neighbour. Maintaining verbal communication with your neighbour during dividing fence discussions is advised as the most effective method of communication, with any agreements followed up in writing.

I want to build 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 and may require a building permit.

If you would like 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 the fence to be built.

You may be liable for the full cost of the new fence if the existing fence is in good condition.

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 example replacing a damaged old asbestos fence with a new sheet metal one, is not a repair.

Will I need a development (planning) application?

A development (planning) application is not needed to construct a dividing fence but may be needed for a street wall or fence.

For further information about street walls and fences in the City of Stirling, please refer to the City's [Street Walls and Fences Information Sheet](#).

Will I need a building permit for a dividing fence?

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

- The structure is constructed in accordance with the City's Fencing Local Law 2008;
- The structure if constructed of masonry is no more than 0.75 metres in height; and
- The structure if constructed of a material other than masonry, is no more than 1.8 metres in height.

Application forms, building application checklists, applicable fees, and information on how to lodge an application are available on the City's website at stirling.wa.gov.au.

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

Your fence will need to comply with the Australian Standard for safety barriers for swimming pools. Further information about pool fencing is available on the [City's website](#).

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

If you are unsure about how to contact the owner of the neighbouring property, you may want to:

- Check with the tenants or property manager if the property is rented or leased;
- Conduct a land title search through the Landgate website; or
- Call the City of Stirling on 9205 5555 to speak with a Rates Officer and request neighbour details in relation to a dividing fence matter. Alternatively, further information about how to request your neighbour's contact details is available on the [City's website](#).

Mediation

Because it does not administer the Act, the City is unable to direct your neighbour to construct a sufficient fence and has no legal ability to direct or provide adjudication about costs or repairs.

If reaching agreement with your neighbour about the dividing fence is proving to be difficult, you may want to consider a mediation service. The Citizens Advice Bureau offer a service for mediation in community disputes about issues like dividing fences.

Further information about Citizens Advice Bureau mediation services is available at cabwa.com.au/mediation-service.

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. Court may be an alternative if you have exhausted other alternatives, like speaking with your neighbour and formalised mediation, to resolve the dividing fence dispute.

More information about making an application can be found on the [Magistrates Court website](#).

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. Further information about asbestos is available on the [City's website](#).

A licensed asbestos removal contractor will be required to remove asbestos containing material that is friable or has an area greater than ten square metres.

Can a builder remove my dividing fence during construction?

When a dividing fence is required to be removed to allow building work to occur, the builder should either complete a form known as a BA20A Form or obtain neighbour consent before removing the dividing fence. Please note that, although consultation and consent is required by DMIRS, the Department allows this process to occur at any time before the fence is removed. Consequently, the City is not able to enforce this requirement as part of the building permit process.

Boundary walls, also referred to as 'close walls' are the exception to the need for neighbour consent. When a dividing fence needs to be removed for the construction of a boundary wall, neighbours must be notified but their consent is not required. This exception only applies to the portion of dividing fence to be replaced by a boundary wall and neighbour consent should be obtained to remove any other portion of the dividing fence.

Further information

Enquiries may be made to the City's Planning or Building staff on 9205 8555 or at the City's offices between the hours of 8.30am and 5.00pm, Monday to Friday.