

LOCAL GOVERNMENT ACT 1995

TOWN OF CLAREMONT
FENCING LOCAL LAW 2024

DRAFT

LOCAL GOVERNMENT ACT 1995

TOWN OF CLAREMONT

FENCING LOCAL LAW 2024

PART 1 — PRELIMINARY 1

- 1.1 Citation1
- 1.2 Commencement1
- 1.3 Purpose and effect1
- 1.4 Application1
- 1.5 Repeal.....1
- 1.6 Definitions1
- 1.7 Relationship with other laws 3
- 1.8 Fees and charges4

PART 2 — FENCES..... 4

- 2.1 Sufficient fences4
- 2.2 Fences within front setback areas.....4
- 2.3 Fences on lots with two street frontages5
- 2.4 Gates in fences.....5
- 2.5 Depositing fencing material on public place5
- 2.6 Fences abutting Regional Open Space5
- 2.7 Fences abutting Public Open Space6
- 2.8 Fences across rights-of-way, public access ways, right of carriageway easement or thoroughfares6
- 2.9 Fencing of Tennis Courts6
- 2.10 Maintenance of fences.....6
- 2.11 General discretion of the local government6
- 2.12 Fencing Designs.....6
- 2.13 Pre-used fencing materials.....7
- 2.14 Prohibited fencing materials7

PART 3 — APPROVALS 7

- 3.1 Application for approval.....7
- 3.2 Decision on application for approval.....8
- 3.3 Compliance with approval8
- 3.4 Duration of approval8
- 3.5 Expiry of approval9

PART 4 — MISCELLANEOUS 9

 4.1 False or misleading statement9

PART 5 — NOTICES OF BREACH..... 9

 5.1 Notices of breach.....9

PART 6 — OFFENCES 10

 6.1 Offences and penalties.....10

 6.2 Modified penalties10

 6.3 Form of notices.....10

PART 7 — OBJECTIONS AND REVIEW 10

 7.1 Objections and review10

SCHEDULE 1 – OFFENCES AND MODIFIED PENALTIES..... 10

SCHEDULE 2 - SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT..... 11

SCHEDULE 3 - SPECIFICATIONS FOR A SUFFICIENT FENCE ON A NON-RESIDENTIAL LOT 12

DRAFT

LOCAL GOVERNMENT ACT 1995**TOWN OF CLAREMONT****FENCING LOCAL LAW 2024**

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Town of Claremont resolved on _____ 2024 to make the following local law.

PART 1 — PRELIMINARY**1.1 Citation**

This local law may be cited as the *Town of Claremont Fencing Local Law 2024*.

1.2 Commencement

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

1.3 Purpose and effect

- (1) The purpose of this local law is to prescribe a sufficient fence and the standard for the construction of fences throughout the district.
- (2) The effect of this local law is to establish the minimum requirements for fencing within the district.

1.4 Application

This local law applies throughout the district.

1.5 Repeal

The *Town of Claremont Fencing Local Law 2000* published in the *Government Gazette* on 29 December 2000 is repealed.

1.6 Definitions

- (1) In this local law —

Act means the *Dividing Fences Act 1961*;

applicant means a person who makes an application for approval under this local law;

approval or **approval by the local government** means an approval granted under Part 3 of this local law.

authorised person means a person appointed under section 9.10 of the *Local Government Act 1995* to perform any of the functions of an authorised person under this local law;

barbed wire fence means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals and includes other materials with spiked or jagged projections

boundary fence means a fence, other than a dividing fence, that separates private land from land that is local government property or a thoroughfare whether it is on the common boundary of the adjoining private land and local government property or thoroughfare or on a line other than the common boundary;

Building Surveyor means a Building Surveyor of the local government; **CEO** means the Chief Executive Officer of the local government;

dangerous in relation to any fence means—

- (a) an electrified fence other than a fence approved by the local government 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 is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;
- (e) a fence that has become dangerous through lack of maintenance or repair;

district means the district of the local government;

dividing fence means a fence that separates the lands of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary (or, as amended by the Act);

electrified fence means a fence carrying or designed to carry an electric charge;

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;

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 on a line adjacent to the front boundary;

front setback area means the area between the building line of a lot and the front boundary of that lot;

height in relation to a fence means the vertical distance between—

- (a) the top of the fence at any point; and
- (b) the natural ground level or, where the natural ground levels on each side of the fence are not the same, the higher natural ground level, immediately below that point;

licence means an electrified fence licence or a razor wire fence licence;

local government means the Town of Claremont;

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 of the local government made under the *Planning and Development Act 2005*;

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

Non-residential Lot means a lot where a non-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;

notice of breach means a notice referred to in clause 5.1;

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

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

razor wire fence means a coiled strong wire with pieces of sharp cutting edges set across it at close intervals;

Residential Design Codes means the residential development standards set by the State government and applied through the provisions of the local planning scheme;

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 or structures in order to allow ground levels of different elevations to exist adjacent to one another;

Schedule means a Schedule to this local law;

sufficient fence means a fence described in clause 2.1; and

thoroughfare has the meaning given to it by the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government.

- (2) A term that is used in this local law and is not defined in clause 1.6 has the meaning given to it in the *Local Government Act 1995* or, if not defined in the *Local Government Act 1995*, the meaning given to it in the *Dividing Fences Act 1961*.

1.7 Relationship with other laws

- (1) In the event of any inconsistency between the provisions of a local planning scheme (including the requirements of the Residential Design Codes) and the provisions of this local law, the provisions of the local planning scheme are to prevail.
- (2) Nothing in this local law affects the need for compliance, in respect of a fence, with—
- (a) any relevant provisions of a local planning scheme or a local planning policy adopted under 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 Fees and charges

All fees and charges applicable under this local law shall be determined by the local government from time to time in accordance with section 6.16 to 6.19 of the *Local Government Act 1995*.

PART 2 — FENCES

2.1 Sufficient fences

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence. Subject to subclauses (3) and (4), a sufficient fence—
 - (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2; and
 - (b) on a Non-residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3; and
- (2) Where a fence is erected on or near the boundary between a Residential Lot and a Non-residential Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the provisions of the local planning scheme, or where approved by the local government, the specifications and requirements of Schedule 2.
- (3) An application must be made to the local government for grant of consent to any variation to the specifications and requirements of this local law.
- (4) Unless an authorised person determines otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (1) is a dividing fence constructed in accordance with the specifications and requirements of Schedule 2.
- (5) Notwithstanding any other provision in this local law, a dividing fence or boundary fence constructed of masonry, stone or concrete shall be a sufficient fence only if it is designed by a suitably qualified structural engineer and constructed in accordance with that design where—
 - (a) it is greater than 1800 millimetres in height; or
 - (b) where required by the Building Surveyor.
- (6) Notwithstanding any other provision in this local law, a dividing fence or boundary fence shall not exceed 1800 millimetres in height unless the approval of the local government has been obtained for such a fence.

2.2 Fences within front setback areas

- (1) A person shall not erect a free-standing fence greater than 1200 millimeters in height, within the front setback area of a residential lot within the district unless consistent with the requirements of the Residential Design Codes and approved by the local government:
 - (a) under Part 3 of this local law; or

- (b) by the grant of a development approval under a local planning scheme.
- (2) A front fence above 750 millimetres in height adjacent to where two streets intersect must be truncated with the minimum dimension of the truncation being 6000 millimetres unless the fence is adjacent to a street that has been classified as an access road under the Australian Road Hierarchy in which case it must be truncated with a minimum dimension of 3000 millimetres.
- A fence adjacent to any vehicle access point must be truncated with the minimum dimension of the truncation being 1500 millimetres or the fence reduced in height to no more than 750 millimetres.
- (3) The provision of subclause (2) shall not apply to a fence of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare or which does not adjoin a footpath.
- (4) Fences within the front setback area may include piers, including capping which do not exceed 2100 millimetres.

2.3 Fences on lots with two street frontages

For the purpose of this clause, the primary street frontage of a lot with two street frontages or more is taken to be the frontage with the lesser dimension or as determined under the provisions of the Residential Design Codes, and the other frontages are taken to be secondary street frontages.

- (a) Any part of a fence on a secondary street frontage located within the front setback area of the primary street frontage shall comply with the requirements for fences within front setback areas.
- (b) The remainder of the fence on the secondary street frontage may be constructed to an average height of 1800 millimetres above the footpath or verge and to a maximum height of 2100 millimetres so as to give privacy to the private open space within the lot.

2.4 Gates in fences

A person shall not erect a gate in a fence which does not—

- (a) open into the lot; or
- (b) open by sliding parallel and on the inside of the lot boundary, which it forms part of, when closed.

without the approval of the local government.

2.5 Depositing fencing material on public place

A person shall not deposit or permit the deposit of any materials whatsoever used in the construction or maintenance of any fence, on any thoroughfare, public place or local government property unless the approval of the local government has been obtained.

2.6 Fences abutting Regional Open Space

A person shall not erect a boundary fence or gate on any lot boundary abutting land that is reserved for Parks and Recreation purposes under the Metropolitan Region Scheme unless the approval of the local government has been obtained.

2.7 Fences abutting Public Open Space

A person shall not erect a boundary fence or gate abutting a Public Open Space reserve unless the approval of the local government has been obtained.

2.8 Fences across rights-of-way, public access ways, right of carriageway easement or thoroughfares

A person must not, without the approval of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across or along the side of any right-of-way, public access way, right of carriageway easement or thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

2.9 Fencing of Tennis Courts

A person shall not erect a fence around or partly around a tennis court on a lot unless -

- (a) the fence is less than 3600 millimetres in height;
- (b) the whole of the fence is at least 900 millimetres from the boundary between the lot on which the tennis court is located and the adjoining lot or if it is less than 900 millimetres, the owner of the adjoining lot has first been given the opportunity to make submissions to the local government on the location of the fence; and
- (c) the fence is constructed of chain link mesh and is poly vinyl coated or galvanised and is erected in accordance with the manufacturer's specification; or
- (d) Otherwise approved by the Town.

2.10 Maintenance of fences

An owner of a lot on which a fence is erected shall maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, or unsightly to the amenity of the locality.

2.11 General discretion of the local government

- (1) Notwithstanding the provisions of clause 2.1, the local government may approve the erection or repair of a dividing fence which is not a sufficient fence where all of the owners of the lots to be separated by the dividing fence make an application for approval for that purpose.
- (2) In determining whether to grant its approval under subclause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on—
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the locality.

2.12 Fencing Designs

Where required by the Building Surveyor, fencing designs are to be certified by a practicing structural engineer as being structurally suitable.

2.13 Pre-used fencing materials

- (1) Notwithstanding clause 2.1, a person shall not construct a fence on a Residential Lot or a Non-residential Lot from pre-used materials without the approval of the local government.
- (2) Where the local government approves the use of pre-used materials in the construction of a fence under subclause (1), that approval may be conditional on the applicant painting or treating the pre-used material as directed by the Building Surveyor.

2.14 Prohibited fencing materials

- (1) In erecting a fence, a person must not use –
 - (a) broken glass or any other potentially harmful projections or material;
 - (b) asbestos fibre;
 - (c) any material that is likely to collapse or fall, or part of which is likely to collapse or fall from any cause; or
 - (d) razor wire.
- (2) A person must not erect a barbed wire fence or an electrified fence.

PART 3 — APPROVALS**3.1 Application for approval**

- (1) Where a person is required to obtain the approval of the local government under this local law, that person shall apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law shall—
 - (a) be 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 forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*.
- (3) An application for approval of a variation in respect of a dividing fence shall be made by:
 - (a) both owners of land adjoining the dividing fence; or
 - (b) one owner of land adjoining the dividing fence and include written consent of the other owner of land adjoining the dividing fence.
- (4) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for approval.
- (5) The local government may refuse to consider an application for approval which is not in accordance with subclauses (2) and (3).

3.2 Decision on application for approval

- (1) The local government may—
 - (a) grant the application, unconditionally or subject to any conditions it considers appropriate; or
 - (b) refuse to grant the application.
- (2) In determining whether to grant its approval under subclause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on:
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the locality.
- (3) If the local government grants the application subject to conditions, those conditions may relate to matters including —
 - (a) the location, type and construction of a fence;
 - (b) the height of a fence;
 - (c) in the case of an electric fence, the operating time and duration; and
 - (d) any other matter considered relevant by the local government.
- (5) If the local government grants the approval, it is to issue to the applicant an approval in the form determined by the local government.
- (6) If the local government refuses to grant the approval, it is to give written notice of that refusal to the applicant and the reasons for the refusal.

3.3 Compliance with approval

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

3.4 Duration of approval

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 upon by any subsequent occupier or owner of the lot; and
- (c) may be enforced by the local government against a subsequent occupier or owner of the lot.

3.5 Expiry of approval

- (1) Where:
 - (a) an approval is granted under clause 3.2; and
 - (b) any works the subject of the approval are not completed within two (2) years of the date of issuance of the approval,the approval shall lapse.
- (2) Where an approval lapses under subclause (1), the applicant must apply for and obtain a further approval prior to any undertaking any further works.

PART 4 — MISCELLANEOUS

4.1 False or misleading statement

A person shall not make a false or misleading statement in connection with any application, requirement or request under this local law.

PART 5 — NOTICES OF BREACH

5.1 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) A notice of breach shall—
 - (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner is required to remedy the breach within the time specified in the notice.
- (3) Should an owner fail to comply with a notice of breach, 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 so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.
- (4) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry on to land will be in accordance with Part 3, Division 3 of that Act.

PART 6 — OFFENCES

6.1 Offences and penalties

- (1) Any person who
 - (a) fails to do anything required or directed to be done under this local law;
 - (b) fails to comply with the requirements of a notice of breach; or
 - (c) does anything which under this local law they are prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable upon conviction to a maximum penalty of \$5,000 and a maximum daily penalty of \$500 in respect of each day or part of a day during which the offence has continued.

6.2 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 *Local Government Act 1995*.
- (2) The amount appearing in the final column of Schedule 1, directly opposite a prescribed offence in that Schedule, is the modified penalty for that prescribed offence.

6.3 Form of notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in sections 9.16 and 9.17 of the *Local Government Act 1995* is to be in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 7 — OBJECTIONS AND REVIEW

7.1 Objections and review

When the local government makes a decision under clause 3.2, the provisions of Part 9 Division 1 of the *Local Government Act 1995* and regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.

SCHEDULE 1 – OFFENCES AND MODIFIED PENALTIES

[clause 6.2(2)]

Item No	Clause No.	Nature of offence	Modified penalties \$
1	2.1(1)	Erect a fence which is not a sufficient fence	250
2	2.2(1)	Erect a fence greater than 1200mm in height within a front setback area of a residential lot without approval of the local government	250
3	2.3	Erect a fence on a lot with two street frontages contrary to clause 2.3	250
4	2.4(a)	Erect a gate in a fence not opening into the lot	200
5	2.4(b)	Erect a gate in a fence not sliding parallel and inside a property boundary	200
6	2.6	Erect a boundary fence on any boundary abutting land that is reserved for Parks and Recreation purposes in the Metropolitan Region Scheme without approval of the local government	250
7	2.7	Erect a boundary fence abutting a Public Open Space Reserve without approval of the local government	250
8	2.8	Erect or maintain a fence or obstruction of temporary or permanent nature across a right-of way, public access way or thoroughfare without approval of the local government	250
9	2.9	Erect a fence around a tennis court contrary to clause 2.8	250
10	2.10	Failure to maintain a fence in good condition to prevent the fence becoming dangerous, dilapidated or unsightly	250
11	2.13(1)	Construct a fence on a Residential or Non-residential Lot from pre-used materials without approval of the local government	250
12	2.14(1)	Erect a fence using prohibited fencing materials	500
13	2.14(2)	Erect a barbed wire or electric fence	500
14	3.3	Failure to comply with terms or conditions of approval	500
15	5.1	Failure to comply with notice of breach	500
16		Other offences not specified	500

SCHEDULE 2 - SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

[clause 2.1(1)(a)]

- (1) This Schedule does not apply to a front fence.
- (2) Refer to clause 2.2 of this local law for fences within the front setback area.
- (3) On a Residential Lot, a sufficient fence is a dividing fence that –
 - (a) is constructed of:
 - (i) corrugated fibre-reinforced pressed cement sheeting;
 - (ii) timber palings;
 - (iii) masonry (including brick, stone or concrete);
 - (iv) factory coloured sheet metal post and panelled fence;
 - (v) PVC panel (e.g. Duralock); or
 - (vi) any combination of the materials described in paragraphs (i)-(v); and
 - (b) shall not exceed 1800 millimetres in height measured from the higher ground level unless the approval of the local government has been obtained for such a fence.
 - (c) Where constructed of a panel system, the lower supporting frame shall be supplemented with a barrier below to prevent stormwater flow and sand-drift in the adjoining property.
 - (d) where constructed of masonry, is in accordance with the Building Code of Australia at the time of construction.

SCHEDULE 3 - SPECIFICATIONS FOR A SUFFICIENT FENCE ON A NON-RESIDENTIAL LOT

[clause 2.1(1)(b)]

- (1) This Schedule does not apply to a front fence.
- (2) Refer to clause 2.2 of this local law for fences within the front setback area.
- (3) On a Non-residential Lot, a sufficient fence is a dividing fence that –
 - (a) is constructed of:
 - (i) link mesh, chain mesh or steel mesh;
 - (ii) corrugated fibre-reinforced pressed cement sheeting;
 - (iii) painted or galvanized steel or aluminium sheeting; or
 - (iv) timber or masonry (including brick, stone or concrete); and
 - (b) is no more than 2200 millimetres in height; and
 - (c) where constructed of masonry, is in accordance with the Building Code of Australia at the time of construction.

Dated

The Common Seal of the Town of Claremont
was affixed by authority of a resolution of
the Council in the presence of –

JOHN GILBERT BARKER
Mayor

ELIZABETH LEDGER
Chief Executive Officer

DRAFT