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LOCAL GOVERNMENT ACT 1995

TOWN OF VICTORIA PARK

FENCING LOCAL LAW 2021

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FENCING LOCAL LAW 2021

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LOCAL GOVERNMENT ACT 1995

TOWN OF VICTORIA PARK

FENCING LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Town of Victoria Park resolved to make the following local law on the 16 February 2021.

PART 1—PRELIMINARY**1. Citation**

This local law may be cited as the *Town of Victoria Park Fencing Local Law 2010*.

2. Commencement

This local law commences on—

- (a) 1 July 2021; or
- (b) fourteen days following its publication in the *Government Gazette*;

whichever is the latest.

3. Purpose and effect

(1) The purpose of this local law is to prescribe what constitutes 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.

4. Repeal and transitional provisions

The local law cited as the *Town of Victoria Park Local Laws Relating to Fencing* published in the *Government Gazette* on 22 September 2000 is repealed.

5. Application

This local law applies throughout the district.

6. Definitions and interpretation

(1) In this local law, unless the context requires otherwise—

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 5 of this local law.

AS/NZS 1170.0:2002 Structural design actions—general principles means the Australian Standard for structural design actions—general principles.

AS/NZS 3016-2002 Electrical installations—Electricity security fences means the Australian Standard for Electrical installations—Electric security fences.

Australian Standard means an Australian Standard published by Standards Australia as amended from time to time;

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 means a wire or strand of wires having small pieces on 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 permit has the meaning given to it in the *Building Act 2011*;

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 or erected and maintained in accordance with 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;
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause; or
- (e) a fence that has become dangerous through lack of maintenance or repair;

district means the district of the local government;

dividing fence has the meaning given to it in the *Dividing Fences Act 1961*;

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

fence means any structure, 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 a line adjacent to the front boundary;

front setback area, in relation to a lot, means the area between the building line of the lot and the front boundary of the lot;

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

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

local government means the Town of Victoria Park;

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 that is not a residential lot;

notice of breach means a notice referred to in clause 25;

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;

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

owner means—

- (a) for the purposes of the definition of dividing fence, has the meaning in the *Dividing Fences Act 1961*; and
- (b) for all other purposes, has the meaning in the *Local Government Act 1995*;

penalty unit has the meaning given to it in the *Town of Victoria Park Penalty Units Local Law 2020*.

retaining wall means any structure which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

Professional engineer has the meaning given to it in the Building Code of Australia as amended from time to time.

Schedule means a Schedule to this local law;

sufficient fence means a fence described as a sufficient fence in clause 9(2) but does not include a retaining wall;

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

visually permeable has the meaning given to it in State Planning Policy 7.3 Residential Design Codes Volume 1 as amended from time to time;

(2) A term that is used in this local law and is not defined in subclause (1) 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*.

7. Relationship with other laws

- (1) In the event of any inconsistency between the provisions of a local planning scheme 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*.

8. Fees and charges

All fees and charges applicable under this local law shall be as 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—SUFFICIENT FENCES**9. Sufficient fences**

- (1) A person must not erect a fence that is not a sufficient fence.
- (2) A sufficient fence means—
- (a) a fence constructed and maintained on a residential lot in accordance with the specifications and requirements of Schedule 1;
 - (b) a fence constructed and maintained on a non-residential lot in accordance with the specifications and requirements of Schedule 2;
 - (c) a dividing fence erected on or near the boundary between a residential lot and a non-residential lot constructed and maintained in accordance with the specifications and requirements of Schedule 1;
 - (d) a fence lawfully erected prior to this local law commencing; or
 - (e) a fence approved by the local government under Part 5 of this local law; or
 - (f) a fence approved by the local government under a local planning scheme, other than a fence constructed of masonry exceeding 1200mm in height, which requires separate approval under Part 5 of this local law.

PART 3—GENERAL**10. Fences in front setback areas**

A person shall not erect a free-standing fence greater than 1,200mm in height, within the front setback area of a residential lot within the district unless approved by the local government—

- (a) under Part 5 of this local law; or
- (b) by the grant of a development approval under a local planning scheme.

11. Gates

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 fence, which it forms part of, when closed,

without the approval of the local government.

12. Fences across rights-of-ways, public access ways 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 any right-of-way, public access way or thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

13. Maintenance of fences

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

14. Fences and sightlines

- (1) Unless otherwise approved by the local government, a front fence or boundary fence must comply with the following sightline requirements—
- (a) a fence in the front setback area must provide a 1500mm x 1500mm truncation distance adjacent to any driveway, measured from the point where the driveway intersects with the front boundary, unless—
 - (i) the fence is visually permeable; or
 - (ii) the fence is no higher than 750mm within the area referred to in (a).
 - (b) where a lot has two or more street frontages the fence is truncated at the corner to provide a truncation equal to 6000mm by 6000mm, unless the lot is adjacent to a street that has been classified as an access road under the Western Australian Road Hierarchy, in which case a truncation equal to 3000mm by 3000mm can be provided;

- (c) where two right of ways or laneways intersect, a boundary fence must provide a 3,000 mm by 3,000 mm truncation distance, unless—
 - (i) the fence is a visually permeable fence that does not obscure the lines of vision of a motorist using the right of way or laneway; or
 - (ii) the fence is no higher than 750mm within the area referred to in (c).
- (2) Schedule 4 contains diagrams setting out examples of the truncation requirements.

PART 4—MATERIALS, DESIGN AND CONSTRUCTION

15. Masonry fences

A fence constructed of masonry (including brick, stone or concrete) is to satisfy the following specifications—

- (a) the height of the fence within the front setback area is not to exceed 1200mm in height without the written approval of the local government;
- (b) the fence must be constructed in accordance with the Australian Standard for masonry construction as referenced in the Building Code of Australia at the time of construction; and
- (c) where the fence comprises—
 - (i) a solid masonry fence greater than 1200mm in height; or
 - (ii) a masonry fence with open infill panels greater than 1800mm in height,

the fence is to be certified by a structural engineer as being appropriate for the particular site and wind terrain category.

16. Fencing designs

Where required by an authorised person, fencing design is to be certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions—general principles.

17. Pre-used fencing materials

- (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 shall be conditional on the applicant painting or treating the pre-used material as directed by an authorised person.

18. Prohibited fencing materials

In constructing, repairing or maintaining a fence a person must not use—

- (a) broken glass or any potentially harmful projections or material;
- (b) asbestos fibre;
- (c) material that is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause; or
- (d) pre-used materials unless approved and painted or treated to the satisfaction of an authorised person in accordance with clause 18.

19. Barbed wire fences and spiked or jagged materials

- (1) A person shall not erect a fence with barbed wire or other material with spiked or jagged projections on a residential lot.
- (2) An owner or occupier of a non-residential lot shall not erect, affix or allow to remain on any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the approval of the local government has been obtained.
- (3) Any fence bounding a lot that has barbed wire or other materials with spiked or jagged projections affixed to it may only be approved if the wire or other materials are carried on posts at an angle of 45 degrees, with the bottom row being a minimum of 2,000mm from the ground level.
- (4) If the posts which carry the barbed wire or other materials referred to in subclause (2) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.

20. Electrified and razor wire fences

- (1) An owner or occupier of a lot shall not—
 - (a) construct or use an electrified or razor wire fence on a residential lot;
 - (b) construct or use an electrified fence on a non-residential lot without obtaining the approval of the local government; or
 - (c) construct a fence with any razor wire on a non-residential lot without obtaining the approval of the local government.
- (2) The local government shall not approve an application for the purpose of subclause (1)(b)—
 - (a) in respect of a lot which is or which abuts a residential lot;
 - (b) unless the fence complies with AS/NZS 3016-2002 Electrical installations—Electricity security fences; and

- (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.
- (3) The local government shall not approve an application for the purpose of subclause (1)(c)—
 - (a) if the fence is within 3,000mm of the boundary of the lot; or
 - (b) where any razor wire used in the construction of the fence is less than 2,000 millimetres or more than 2,400mm above the ground level.
- (4) An application for approval for the purpose of subclauses (1)(b) or (1)(c) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.

PART 5—APPROVALS

21. Application for approval under this local law

- (1) Where a person is required to obtain the approval of the local government under this local law, that person must apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law must—
 - (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 determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.
- (3) An application for approval of a variation to the specifications in Schedules A or B 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) Before determining an application for approval, the local government may require the applicant to provide additional information reasonably related to the application.
- (5) The local government may refuse to consider an application for approval which is not in accordance with subclauses (2)-(4).

Note—

- (1) Development approval for a fence may be required in addition to or in lieu of approval under this local law, where the fence constitutes development and is not exempt from the requirement for approval under clause 61 of the deemed provisions contained in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.
- (2) A building permit is not required for a fence in accordance with Schedule 4 of the Building Regulations 2012.

22. Decision on application for approval

- (1) The local government may, in respect of an application for approval—
 - (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.
- (4) If the local government grants an application for approval, it is to issue to the applicant an approval in the form determined by the CEO.
- (5) If the local government refuses to grant an application for approval, it must give written notice of that refusal and reasons for the refusal to the applicant.

23. 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, must comply with the terms and any conditions of that approval.

24. Duration of approval

Unless otherwise stated in the conditions of approval, an approval granted under this local law—

- (a) runs with the lot to which it relates;
- (b) may be relied on 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.

25. Expiry of approval

(1) Where—

- (a) an approval is granted under clause 22(1); 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.

26. Variation or cancellation of approval

(1) The local government may, by written notice to owner of the lot to which the approval relates, vary the conditions of an approval after it has been issued.

(2) The local government may cancel an approval granted under clause 22(1) by written notice to the owner of the lot to which the approval relates where—

- (a) the owner or occupier of the lot fails to do anything required or directed to be done under this local law in relation to the fence the subject of the approval;
- (b) the owner or occupier of the lot fails to comply with a notice of breach issued under clause 27(1) in relation to the fence the subject of the approval;
- (c) the approval is for a fence with barbed wire or other materials with spiked or jagged projections and the lot to which the approval relates is rezoned under a local planning scheme so as to become a residential lot;
- (d) the approval is for an electrified or razor wire fence and the lot to which the approval relates is rezoned under a local planning scheme so as to become a residential lot; or
- (e) the approval has been issued to an incorrect lot or otherwise contains a manifest error.

(3) Where an approval is cancelled pursuant to subclause (1) the approval shall cease to be of any force and effect.

PART 6—NOTICES OF BREACH**27. Notices of breach**

(1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, an authorised person 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 of the lot is required to remedy the breach within twenty eight (28) days from the giving of 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 7—OFFENCES**28. Offences and penalties**

(1) A 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 that person is prohibited from doing,

commits an offence.

(2) A person who commits an offence under this local law is liable 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.

29. 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 third column of Schedule 3 directly opposite the offence is the modified penalty payable in respect of that offence.

(3) Where this local law expresses the modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

30. Form of notices

For the purposes of these Local Laws—

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

PART 8—OBJECTIONS AND REVIEW**31. Objections and review**

Where the local government makes a decision under Part 5 of this local law, 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**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT**

Clause 9(3)(a)

Each of the following is a “sufficient fence” on a residential lot—

- (a) a fence that is not located in the front setback area, constructed of timber, corrugated fibre reinforced pressed cement or steel sheeting or other non-permeable materials designed specifically for use as a fence, which satisfies the following specifications—
 - (i) the height of the fence to be a minimum 1800mm and a maximum of 2400mm; and
 - (ii) construction to be in accordance with Australian Standards and the manufacturer’s specifications or best practice construction technique;
- (b) a front or boundary fence located in the front setback area, constructed of timber or steel that—
 - (i) is visually permeable;
 - (ii) complies with clause 10; and
 - (iii) is constructed in accordance with Australian Standards and the manufacturer’s specifications or best practice construction technique;
- (c) a dividing fence located in the front setback area, constructed of timber, corrugated fibre reinforced pressed cement or steel sheeting or other non-permeable materials designed specifically for use as a fence that—
 - (i) complies with clause 10; and
 - (ii) is constructed in accordance with Australian Standards and the manufacturer’s specifications or best practice construction technique;
- (d) a fence constructed of masonry (including brick, stone or concrete) which meets the specifications of clause 15.

Schedule 2**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A NON-RESIDENTIAL LOT**

Clause 6(2)(b)

Each of the following is a “sufficient fence” on a non-residential lot—

- (a) a fence that meets the specifications in Schedule A;
 - (b) a galvanised steel frame and galvanised link or chain mesh fence with poly vinyl chloride coat or galvanised wire—
 - (i) at a minimum height of 1800mm and a maximum height of 2400mm; and
 - (ii) constructed in accordance with Australian Standards and the manufacturer’s specifications.
-

Schedule 3
MODIFIED PENALTIES

Clause 30(2)

Item	Clause	Nature of Offence	Penalty units
1	9(1)	Erecting a fence that is not a sufficient fence	25
2	10	Erecting a fence exceeding 1200mm in height in a front setback area without the approval of the local government	25
3	11	Erecting a gate in a fence contrary to clause 12 without the approval of the local government	25
4	12	Erecting a fence across a right of way, public access way or thoroughfare without the approval of the local government	25
5	13	Failing to maintain a fence in good condition	25
6	14	Erecting a fence contrary to sightline requirements without the approval of the local government	25
7	15	Constructing a masonry fence contrary to clause 15	25
8	16	Failing to certify fencing design where required by an authorised person	25
9	17	Constructing a fence with pre-used fencing materials without the approval of the local government.	25
10	18	Constructing, repairing or maintaining a fence with prohibited fencing materials	50
11	19(1)	Erecting a barbed wire fence on a residential lot	50
12	19(2)	Erecting a barbed wire fence on a non-residential lot without the approval of a local government	50
13	20(1)(a)	Erecting or maintaining an electrified or razor wire fence on a residential lot	50
14	20(1)(b) and 20(1)(c)	Erecting or maintaining an electrified fence or razor wire fence without the approval of local government on a non-residential lot.	50
15	23	Failing to comply with the conditions of an approval	50
16	26(1)(b)	Failing to comply with a notice of breach	50

—————

Schedule 4

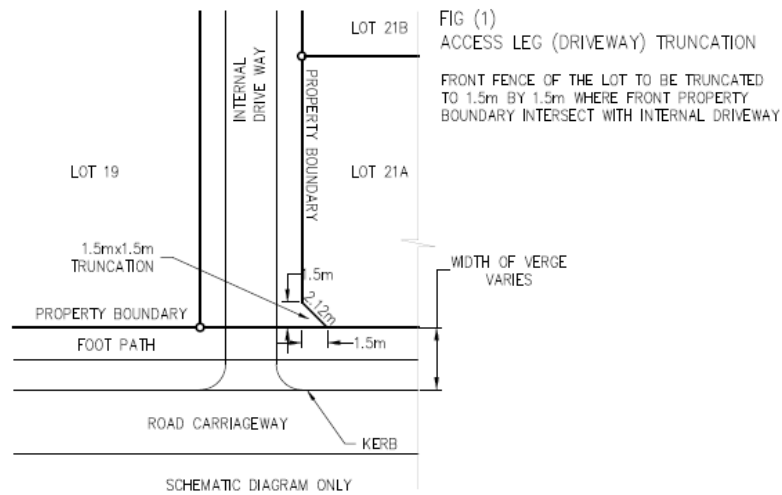
EXAMPLE DIAGRAMS FOR TRUNCATION REQUIRED UNDER CLAUSE 14

Clause 14(2)

For the purpose of this schedule and clause 14—

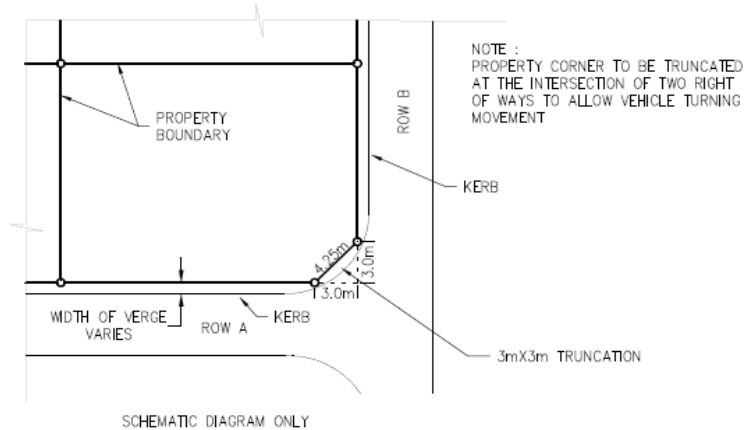
- (1) The first diagram relates to the driveway truncation required under clause 14(a);
- (2) The second diagram relates to the corner truncation required where two rights of ways meet under clause 14(c);
- (3) The third diagram relates to the corner truncation required where two access roads meet under clause 14(b);
- (4) The fourth diagram relates to the corner truncation required where a distributor road or greater meets an access road under clause 14(b).

First diagram—



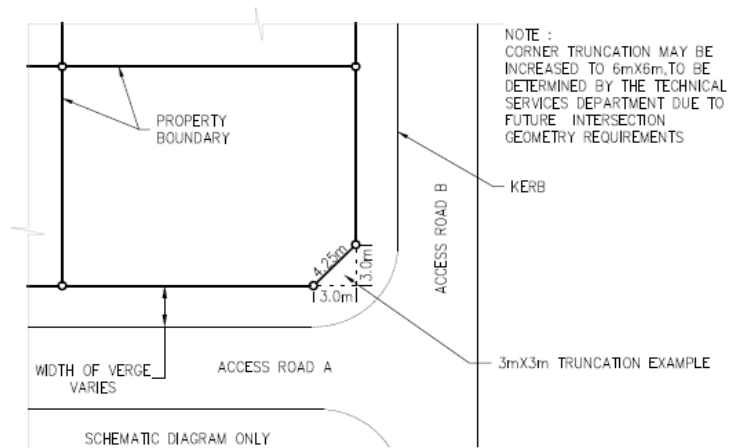
Second diagram—

FIG (2)
T-JUNCTION ARRANGEMENT—2 INTERSECTING RIGHT OF WAYS
BOUNDARY FENCE OF THE LOT AT THE STREET CORNER TO BE TRUNCATED 3.0m BY 3.0m AT THE INTERSECTION OF TWO RIGHT OF WAYS



Third diagram

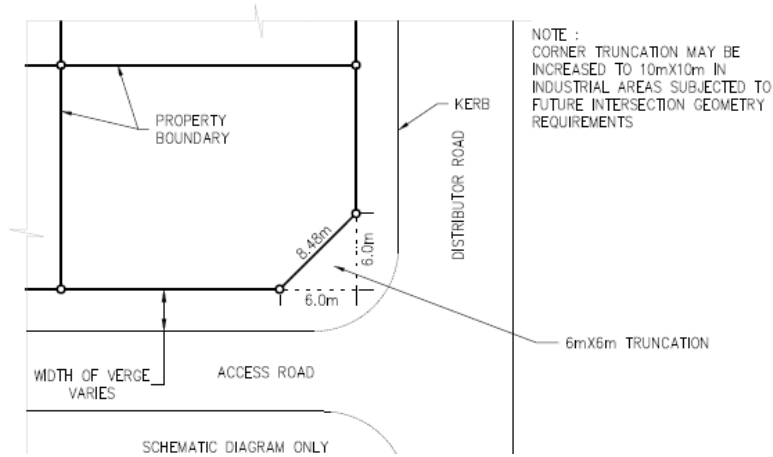
FIG (3) T-JUNCTION ARRANGEMENT—ACCESS ROAD INTERSECTS WITH ANOTHER ACCESS ROAD
BOUNDARY FENCE OF THE LOT AT THE STREET CORNER TO BE TRUNCATED 3.0m BY 3.0m AT THE INTERSECTION OF TWO ACCESS ROADS



Fourth diagram

FIG (3) T-JUNCTION ARRANGEMENT-ACCESS ROAD INTERSECTS WITH DISTRIBUTOR ROAD

BOUNDARY FENCE OF THE LOT AT THE STREET CORNER TO BE TRUNCATED 6.0m BY 6.0m AT THE INTERSECTION OF AN ACCESS ROAD AND A DISTRIBUTOR ROAD



Under the powers conferred by the *Local Government Act 1995* and by all other powers, the Council of the Town of Victoria Park resolved to make the following local law on the 16 February 2021.

The Common Seal of the Town of Victoria Park was affixed by the authority of a resolution of the Council in the presence of—

KAREN VERNON, Mayor.

ANTHONY VULETA, Chief Executive Officer.

On the 5th day of March, 2021.

Revision History—

Version	Made, Amended, Revoked	Date	Council Resolution Number	Effective	Key Changes/Notes
1	Made	05/01/2021		16/02/2021	Compliance with the Building Act and Australian Standards, revised fencing specifications, barbed wire fencing requirements, new offenses