

LOCAL GOVERNMENT ACT 1995
SHIRE OF MUNDARING
LOCAL LAW RELATING TO FENCING

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Shire of Mundaring resolved to make the following local law on the 24th day of February 2004.

PART 1 - PRELIMINARY

1. Citation

These Local Law may be cited as the *Shire of Mundaring Local Law Relating to Fencing*.

2. Repeal

The Shire of Mundaring Local Laws Relating to Fencing published in the *Government Gazette* on 7 August 1981 as amended by publication in the *Government Gazette* on 25 February 1983, are repealed.

3. Application of Local Law

This Local Law applies throughout the district.

4. Interpretation

In this Local Law, unless the context requires otherwise:

“**Act**” means the *Dividing Fences Act 1961*;

“**AS**” means an Australian Standard published by the Standards Association of Australia;

“**boundary fence**” has the meaning given to it for the purposes of the Act;

“**Building Surveyor**” means a Building Surveyor of the local government;

“**CEO**” means the Chief Executive Officer of the local government or a person authorised by him or her;

“**Commercial Lot**” means land where a commercial use -

- (a) is or may be permitted under a Town Planning Scheme; and
- (b) is or may be the predominant use of the lot;

“**dangerous**” in relation to any fence means:

- (a) an electrified fence other than a fence in respect of which a licence under Part 5 of this Local Law has been issued and is current;
- (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, 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;

“**district**” means the district of the local government;

“dividing fence” has the meaning given to it in and for the purposes of the Act;

“electrified fence” means a fence carrying or designed to carry an electric current;

“fence” means any structure, including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

“frontage” means the boundary line between a lot and the thoroughfare upon which that lot abuts;

“General Rural Lot” means land that is within a General Rural Zone in a Town Planning Scheme.

“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;

“Industrial Lot” means land where an industrial use -

- (a) is or may be permitted under a Town Planning Scheme; and
- (b) is or may be the predominant use of the lot;

“local government” means the Shire of Mundaring;

“lot” has the meaning given to it in and for the purposes of the *Town Planning and Development Act 1928*;

“notice of breach” means a notice referred to in section 16(1);

“Residential Lot” means land where a residential use -

- (a) is or may be permitted under a Town Planning Scheme; and
- (b) is or may be the predominant use of the lot;

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

“Rural Landscape Living Lot” means land that is within a Rural Landscape Living Zone in a Town Planning Scheme.

“schedule” means a Schedule to this Local Law;

“setback” has the meaning given to it for the purposes of a Town Planning Scheme;

“setback area” means the area of land located between the front boundary of the property and the required building setback as defined by a town planning Scheme.

“sufficient fence” means a fence described in s6; and

“Town Planning Scheme” means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*.

5. Licence Fees and Charges

All licence 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 of the *Local Government Act 1995*.

PART 2 - SUFFICIENT FENCES

6, Sufficient Fences

- (1) A person shall not erect a dividing fence or boundary fence that is not a sufficient fence unless all owners of land which adjoins the relevant boundary agree to erect a fence which though different complies with the requirements of a sufficient fence.
- (2) Subject to sub-sections (3) and (4), and the provisions of a Town Planning Scheme, 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 the First Schedule.
 - (b) on a Commercial Lot and on an Industrial Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule;
 - (c) on a General Rural Lot and on a Rural Landscape Living Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule;
- (3) Where a fence is erected on or near the boundary between:
 - (a) a Residential Lot and an Industrial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
 - (b) a Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
 - (c) a Residential Lot and a General Rural Lot or a Rural Landscape Living Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule.
- (4) Unless the CEO specifies otherwise, a sufficient fence on a boundary between lots other than those specified in sub-section (3) is a dividing fence constructed in accordance with the specifications and requirements of the Third Schedule.
- (5) Notwithstanding any other provisions in this Local Law, a fence constructed of stone, masonry or concrete shall be a sufficient fence only if it complies with a design certified by a practising structural engineer where:
 - (a) it is greater than 1000mm in height; or
 - (b) the CEO so requires.

PART 3 - GENERAL

7. Fences Within Front Setback Areas

- (1) A person shall not, without the written consent of the local government, erect a fence greater than 1200mm in height, within the front setback area of a Residential Lot within the district.
- (2) Subject to the provisions of the Town Planning Scheme, the CEO may approve the erection of a fence of a height greater than 1200mm in the front setback area of a Residential Lot.

8. Fences on a Rural Lot

A person shall not without the written consent of the CEO, erect a fence on a General Rural Lot, or a Rural Landscape Living Lot within 7500mm of a thoroughfare of a height exceeding 1500mm.

9. Maintenance of Fences

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

10. General Discretion of the Local Government

- (1) Notwithstanding section 6, the local government may consent to the erection or repair of a fence that does not comply with the requirements of this Local Law.
- (2) In determining whether to grant its consent to the erection or repair of any fence, the local government may consider, in addition to any other matter that it is authorized to consider, whether the erection or retention of the fence would have an adverse effect on:
 - (a) the safe or convenient use of any land; or
 - (b) the safety or convenience of any person.

PART 4 - FENCING MATERIALS

11. Fencing Materials

- (1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only those materials specified for a sufficient fence in respect of such lot in the First or Second Schedule or other material which may have been pre-used as approved by the CEO.
- (2) Where the CEO approves the use of pre-used materials in the construction of a fence under sub-section (1), that approval shall be conditional on the applicant for approval painting or treating the pre-used material as directed by the CEO.

12. Barbed Wire and Broken Glass Fences

- (1) This section does not apply to a fence constructed wholly or partly of razor wire.
- (2) An owner or occupier of a Residential Lot or a Rural Landscape Living Lot shall not without prior written approval of the CEO erect or affix to any fence on such lot any barbed wire or other material with spiked or jagged projections.
- (3) An owner or occupier of an Industrial Lot or a Commercial Lot shall not erect or affix on any fence bounding that Lot any barbed wire or other materials with spiked or jagged projections unless the wire or materials are carried on posts at an angle of 45 degrees, and unless the bottom row of wire or other materials is set back 150mm from the face of the fence and is not nearer than 2000mm from the ground level.

- (4) If the posts which carry the barbed wire or other materials referred to in sub-section (3) 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.
- (5) An owner or occupier of a lot shall not affix or allow any broken glass to remain as part of any fence or wall.
- (6) An owner or occupier of a General Rural Lot shall not place or affix barbed wire upon a fence on that Lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.

PART 5 - ELECTRIFIED FENCES

13. Requirements for a Licence

- (1) An owner or occupier of a lot, other than a General Rural Lot, shall not erect or use or permit to remain, an electrified fence on that lot without first obtaining a licence under sub-section (2).
- (2) A licence for an electrified fence shall not be issued:
 - (a) in respect of a lot which is or which abuts a Residential or Commercial Lot or Industrial Lot;
 - (b) unless the fence complies with the Australian/New Zealand Standard that refers to an electrified fence; 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) An application for a licence referred to in sub-sections (2) or (3) 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.
- (4) An application for a licence referred to in sub-sections (2) or (3) may be:
 - (a) approved by the local government;
 - (b) approved by the local government subject to such conditions as it thinks fit; or
 - (c) refused by the local government.

14. Transfer of a Licence

A transfer of any land or the lawful grant of a right to occupy any land which is subject of a licence, shall be deemed to be a transfer of a licence under this Part.

15. Cancellation of a Licence

Subject to Division 1 Part 9 of the *Local Government Act 1995*, the local government may cancel a licence issued under this Part if -

- (a) the fence no longer satisfies the requirements specified in section 13(2) as the case may be; or
- (b) the licence holder breaches any condition upon which the licence has been issued.

PART 6 - NOTICES OF BREACH

16. 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 or occupier 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 or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.

PART 7 - OFFENCES

17. Offences and Penalties

- (1) An owner or occupier who fails to comply with a notice of breach commits an offence and is liable upon conviction to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.
- (2) A person who fails to comply with or who contravenes any provision of this Local Law commits an offence and is liable to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

18. 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) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this Local Law is \$100.

19. Form of Notices

For the purposes of this Local Law –

- (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*.

FIRST SCHEDULE

**SPECIFICATIONS FOR A SUFFICIENT FENCE
ON A RESIDENTIAL LOT WITHIN A RESIDENTIAL ZONE**

Each of the following is a “sufficient fence” within a Residential Zone except that in the case of a fence described in Item E the approval of the local government is required -

- A. A timber fence which satisfies the following specifications:
- (a) corner posts to be 125mm x 125mm x 2400mm and intermediate posts to be 125mm x 75mm x 2400mm spaced at 2400mm centres;
 - (b) corner posts to be struted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
 - (c) all posts to be sunk at least 600mm into the ground;
 - (d) rails to be 75mm x 50mm with each rail spanning two bays of fencing double railed or bolted to each post with joints staggered;
 - (e) the fence to be clad with 75mm x 20mm sawn timber, 1800mm in height placed 75mm apart and affixed securely to each rail; and
 - (f) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to section 7.
- B. A fence constructed of fibre reinforced pressed cement or steel sheeting erected to manufacturer’s specifications or which satisfies the following specifications:
- (a) a minimum in-ground length of 25 per cent of the total length of the sheet but in any case shall have a minimum in-ground depth of 600mm;
 - (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
 - (c) the sheets to be lapped and capped in accordance with the manufacturer's specifications; and
 - (d) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to section 7.
- C. A fence constructed of brick, stone or concrete, which satisfies the following specifications:
- (a) footings of a kind appropriate to the soil type;
 - (b) structural support piers to be offset a minimum of 200mm at maximum 3000mm centres or 230mm x 110mm engaged piers to be provided at maximum 3000mm centres;
 - (c) expansion joints in accordance with the manufacturer’s written instructions and approved by a practicing structural engineer; and

- (d) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to section 7.
- D. A composite fence having a minimum overall height of 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to section 7, which satisfies the following specifications for the brick construction:
- (1) (a) brick piers of minimum 350mm x 350mm at 1800mm centres bonded to a minimum height base wall of 514mm;
 - (b) each pier shall be reinforced with one R10 galvanised starting rod 1500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;
 - (c) control joints in brickwork shall be provided with double piers at a maximum of 6000mm centres; or
- (2) (a) brick piers of a minimum 350mm x 350mm x 2700mm centres bonded to the base wall; and
 - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified;
- E. Open Aspect Fencing – Intended for use in the wooded urban areas of the Shire (Requires prior local government approval)
- (a) posts to be 125mm diameter treated timber spaced at not more than 2400mm centres;
 - (b) posts to be buried a minimum of 600mm into stable soil;
 - (c) horizontal top rail to be 100mm diameter treated timber located at not more than 1100mm above the adjacent natural ground level
 - (d) ringlock or similar wire rural fencing material fixed to each post and to the horizontal top rail to control the movement of animals between lots.

SECOND SCHEDULE

**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A
COMMERCIAL LOT AND AN INDUSTRIAL LOT WITHIN A COMMERCIAL
ZONE AND AN INDUSTRIAL ZONE**

Each of the following is a “sufficient fence” within a Commercial Zone and within an Industrial Zone:

- A. A fence constructed of galvanised rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications:
- (a) all posts and piping shall be galvanised;
 - (b) corner posts to be minimum 50mm normal bore x 3.5mm and with footings of a 225mm diameter x 900mm in depth;
 - (c) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3500mm centres and with footings of a 225mm diameter x 750mm in depth;
 - (d) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post and with footings 225mm diameter x 600mm in depth;
 - (e) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together or single 4mm wire;
 - (f) rail-less link, chain or steel mesh is to be to a height of 2000mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm in accordance with section 12(3) of this Local Law; and
 - (g) galvanised link mesh wire to be 2000mm in height and constructed of a minimum of 50mm mesh x 25mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3600mm and shall be constructed of a minimum of 25mm tubular framework with one horizontal and one vertical stay constructed of a minimum of 20mm piping and shall be covered with a minimum of 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.
- B. A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Item B of the First Schedule.
- C. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in the First Schedule.

THIRD SCHEDULE

**SPECIFICATIONS FOR A SUFFICIENT FENCE
ON A GENERAL RURAL LOT AND A RURAL LANDSCAPE LIVING LOT
WITHIN A GENERAL RURAL ZONE**

Each of the following is a “sufficient fence” within a General Rural Zone.

A. Post and Wire Construction

In the case of a non-electrified fence, a sufficient fence on a General Rural Lot or a Rural Landscape Living Lot is a fence of posts and wire construction, the minimum specifications for which are:

- (a) a ringlock or similar wire rural fencing material, tensioned and fixed to all posts.
- (b) posts shall be of timber or other suitable material including -
 - ▶ timber impregnated with a termite and fungicidal preservative;
 - ▶ standard iron star pickets; or
 - ▶ concrete;cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn. Posts to be set minimum 600mm in the ground and 1200mm above the ground; and
- (c) strainer posts shall be not less than 2250mm long and 50mm diameter at the small end (tubular steel to be 50mm in diameter with a nominal bore x 3.5mm) and shall be cut from timber or other suitable material. These shall be placed a minimum of 1000mm in the ground.

B. Post and Rail Construction

- (a) All posts to be of durable grade timber or other suitable material including timber impregnated with termite and fungicidal preservative cut not less than 2400mm long x 125 diameter at the small end. Posts to be set minimum 900mm in the ground and 1500mm above the ground; and
- (b) All rails to be of the same material specified in (a) cut not more than 2100mm long x 100mm diameter at the small end to be properly affixed to the rails. No more than three rails to be used between posts.

Adopted at an ordinary meeting of the Council of the Shire of Mundaring held on the 24th day of February 2004.

Dated the 24th day of February 2004.

The Common Seal of the **Shire of**)
Mundaring was hereunto affixed)
by authority of Council.)

M N Williams
Chief Executive Officer
(or his delegate)

T S Pashley
Authorised Officer

LOCAL GOVERNMENT ACT 1995

SHIRE OF MUNDARING

FENCING AMENDMENT LOCAL LAW 2004

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mundaring, resolved on the 25 day of January 2005 to make the following local law.

Citation

1. This local law may be cited as the “*Shire of Mundaring Fencing Amendment Local Law 2004*”.

Principal Local Law

2. In this local law, the *Shire of Mundaring Fencing Local Law* made under the *Local Government Act 1995* and as adopted by the Council of the Shire of Mundaring by notice published in the *Government Gazette* on the 16 June 2004, is referred to as the principal local law.

Principal Local Law amended

3. The principal local law is amended by:
 1. delete section 13(2)(b) in part which states “unless the fence complies with AS/NZS 3016:1994; and” and insert “unless the fence complies with the Australian /New Zealand Standard that refers to an electrified fence; and”
 2. delete section 6(1) and insert –
“6(1) A person shall not erect a dividing fence or boundary fence that is not a sufficient fence unless all owners of land which adjoins the relevant boundary agree to erect a fence which though different complies with the requirements of a sufficient fence.”
 3. delete the word “and” in the first line in section 9 “Maintenance of Fences” and replace with the word “or”
 4. delete section 11(1) and insert –
“11(1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only those materials specified for a sufficient fence in respect of such lot in the First or Second Schedule or other material which may have been pre-used as approved by the CEO.”
 5. Delete the heading to Schedule 3 and insert “SPECIFICATIONS FOR A SUFFICIENT FENCE ON A GENERAL RURAL LOT AND A RURAL LANDSCAPE LIVING LOT WITHIN A GENERAL RURAL ZONE”

Adopted at an ordinary meeting of the Council of the Shire of Mundaring held on the 25 day of January 2005.

Dated the 27 day of January 2005

The Common Seal of the **Shire of**)
Mundaring was hereunto affixed)
by authority of Council.)

M N Williams
Chief Executive Officer
(or his delegate)

T S Pashley
Authorised Officer