

SHIRE OF WAROONA
LOCAL GOVERNMENT ACT 1995
**LOCAL LAWS RELATING TO FENCING AND TENNIS COURT
FLOODLIGHTING**

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Shire of Waroona resolved to make the following local laws on the 27th day of October 1998.

PART 1 - PRELIMINARY

Citation

1. These Local Laws may be cited as the Shire of Waroona Local Laws Relating to Fencing and Floodlighting.

Repeal

2. The Shire of Waroona By-Laws Relating to Fencing published in the Government Gazette of 21st day of September 1984, are repealed.

Interpretation

3. In these Local Laws, unless the context requires otherwise:

“Act” mean 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;

“Commercial Lot” means a lot where a commercial use -

- a) is or may be permitted under the town planning scheme; and
- b) is or will 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 license under Part 6 of these Local Laws has been issued and is current;

- b) a fence containing barbed wire other than a fence erected and maintained in accordance with these Local Laws;
- 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;

“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 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;

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

“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 a lot where an industrial use -

- a) is or may be permitted under the town planning scheme; and
- b) is or will be the predominant use of the lot;

“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 clause 17(1);

“Residential Lot” means an urban zoned lot (other than ‘Special Residential’ and ‘Rural Living’), where a residential use -

- a) is or may be permitted under the town 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 in order to allow ground levels of different elevations to exist adjacent to one another;

“Rural Lot” means a lot where a rural use -

- a) is or may be permitted under the town planning scheme; and
- b) is or will be the predominant use of the lot;

“Schedule” means a Schedule to these Local Laws;

“setback area” has the meaning given to it for the purposes of the town planning scheme.

“sufficient fence” means a fence described in clause 4; and

“town planning scheme” means the Shire of Waroona Town Planning Scheme No 7 Municipal District gazetted 17 December 1996 as amended.

PART 2 - SUFFICIENT FENCES

Sufficient Fences

- 4. (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Subject to sub-clauses (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 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 Rural 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 Second 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 Second Schedule;
 - c) a Residential Lot and a Rural 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 Building Surveyor specifies otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (3) is a dividing fence constructed in accordance with the specifications and requirements of the Second Schedule.
- (5) Notwithstanding any other provisions in these Local Laws, a fence constructed of stone or concrete shall be a sufficient fence only if it is designed by a structural engineer where:
 - a) it is greater than 1800 mm in height; or
 - b) the Building Surveyor so requires.

PART 3 - GENERAL

Dividing Fences

5. (1) In determining an application for a fence, the Building Surveyor may approve the erection of a fence of a height greater than 750mm in the front setback area of a Residential Lot only if the fence on each side of the driveway into the Lot across the front boundary is to be angled into the Lot for a distance of not less than 1500mm along the frontage to a distance of not less than 1500mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.
- (2) The provision of sub-clause (1) shall not apply to a fence:
 - a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
 - b) that does not adjoin a footpath.

Fences Within Front Setback Areas

6. A person shall not, without the written consent of the Building Surveyor erect, or repair a freestanding fence constructed of corrugated fibre reinforced cement or colour bonded metal sheeting within the front set-back area of a lot within the district.

Fences on a Rural Lot

7. A person shall not without the written consent of the Building Surveyor, erect a fence on a Rural Lot, within 7.5 m of a thoroughfare of a height exceeding 1500mm.

Fences in Special Residential and Rural Residential Zones

8. (1) In some of the areas zoned ‘special residential’ and ‘rural residential’ under the town planning scheme, policies have been adopted which include references to fencing.

Maintenance of Fences

9. An owner and occupier 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, unsightly or prejudicial to the amenity of the locality.

General Discretion of the Local Government

10. (1) The local government may consent to the erection or repair of a fence which does not comply with the requirements of these Local Laws.
- (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 authorised 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; or
 - c) the orderly and proper planning of the locality; or
 - d) the amenity of the locality.

PART 4 - FENCING MATERIALS

Fencing Materials

11. (1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only brick, stone, concrete, wrought iron, tubular steel framed, link mesh, timber, plastic coated or galvanised link mesh, corrugated fibre reinforced cement sheeting, colour bonded metal or a material approved by the Building Surveyor.
- (2) Where the Building Surveyor approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant for approval painting or treating the pre-used material as directed by the Building Surveyor.

Barbed Wire and Broken Glass Fences

12. (1) An owner or occupier of a Residential Lot or a Commercial Lot shall not erect or affix to or allow to remain on or as part of any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the prior written approval of the Building Surveyor has been obtained.
- (2) An owner or occupier of an Industrial Lot shall not erect or affix or allow to remain as part of 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 bent back into the lot from the boundary 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.

- (3) An owner or occupier of a lot shall not affix or allow to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.
- (4) An owner or occupier of a 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 - TENNIS COURT FENCING AND FLOODLIGHTING

- 13. (1) This clause does not apply to a Rural Lot.
- (2) A person shall not erect or repair a fence around or partly around a tennis court on a lot unless:
 - a) the fence is not more than 3600mm in height;
 - b) the whole of the fence is at least 900mm from the boundary between the lot on which the tennis court is located and the adjoining lot or if it is less than 900 mm, 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;
 - c) the corner posts are at least 50mm nominal bore galvanised 3.6mm gauge pipe set into 750mm x 230mm diameter concrete bases;
 - d) the intermediate fence posts are of not less than 40mm nominal bore galvanised 3.2mm gauge pipe set into 600mm x 230mm diameter concrete bases and are not more than 3000mm apart;
 - e) corner stays are at least 40mm nominal bore galvanised 3.2mm gauge pipe concreted into the ground and secured to corner posts by clamp on fittings.
 - f) the chain link fabric mesh is not more than 2600mm in height and is 50mm x 2.5mm poly-vinyl chloride coated or galvanised; and
 - g) the supporting cables are double twisted 3.15mm poly-vinyl chloride coated or galvanised wire and are fixed 75mm from the top and bottom of the mesh and 1530mm from the ground level.

Tennis Court Floodlighting

14. (1) This clause does not apply to a Rural Lot.
- (2) In determining an application for a building license or planning consent in respect of the erection or use of floodlights or other exterior lights for illumination of a tennis court on a lot the local government shall not approve the application unless:
 - a) the owner of each adjoining lot is given the opportunity to make submissions;
 - b) light fittings are not more than 3600mm above natural ground level;
 - c) light fittings used are of a type mounted horizontally or of a type approved by the Building Surveyor;
 - d) the level of light from the floodlights or external lights on any land more than 1000mm from the lot does not exceed 10 lumens; and
 - e) where required by the Building Surveyor, written approval to the erection of the lights or other exterior lights has been obtained from the Commissioner of Main Roads.

PART 6 - ELECTRIFIED FENCES

Requirement for a License

15. (1) An owner or occupier of a lot, other than a Rural Lot, shall not have and use an electrified fence on that lot without first obtaining a license under subclause (2).
- (2) A license to have and use an electrified fence shall not be issued:
 - a) in respect of a lot which is or which abuts a Residential Lot;
 - b) unless the fence complies with AS/NZS 3016:1994; 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 license referred to in subclause (2) 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 license referred to in subclause (2) 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.

Transfer of a License

16. (1) The holder of a license referred to in clause 15 may transfer that license to another occupier or owner of the lot only with the written approval by the local government.
- (2) The application for a transfer of a license shall be:
- a) made by the proposed transferee;
 - b) in the form determined from time to time by the local government;
 - c) signed by the holder of the license;
 - d) accompanied by the fee determined by the local government from time to time; and
 - e) accompanied by such other information as the local government may require to determine the application.
- (3) The local government may:
- a) approve the application for a transfer of the license;
 - b) approve the application for a transfer of the license subject to such conditions as it thinks fit; or
 - c) refuse to approve the application for a transfer of the license.

Cancellation of a License

17. Subject to Division 1 Part 9 of the *Local Government Act 1995*, the local government may cancel a license issued under this Part if -
- a) the fence no longer satisfies the requirements specified in clause 15(2) or as the case maybe; or
 - b) the license holder breaches any condition upon which the license has been issued.

PART 7 - NOTICES OF BREACH

Notices of Breach

18. (1) Where a breach of any provisions of these Local Laws 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 these Local Laws 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.
 - (3) Should an owner or occupier 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.

PART 8 - OFFENCES

Offences and Penalties

19. (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 these Local Laws 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.

Modified Penalties

20. (1) An offence against any provision of these Local Laws 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 these local laws is \$100.

Form of Notices

21. For the purpose 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.

First Schedule

Clause 4(2)(a)

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

Each of the following is a “sufficient fence” on a Residential Lot:

- A. A picket timber fence which satisfied 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 struttied two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
 - c) intermediate posts to be doubled yankee struttied with 150mm x 25mm x 450mm struts;
 - d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
 - e) rails to be 75mm x 50mm with each rail spanning two bays of fencing double railed or bolted to each post with joints staggered;
 - f) the fence to be covered with 75mm x 20mm sawn pickets, 1800mm in height placed 75mm apart and double nailed to each rail; and
 - g) the height of the fence to a minimum of 1800mm.
- B. A fence constructed of corrugated fibre reinforced pressed cement sheeting 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 sheet;
 - c) the sheets to be lapped and capped with extruded “snap-fit” type capping in accordance with the manufacturer’s written instructions; and
 - d) the height of the fence to be a minimum of 1800mm.
- C. A fence constructed of brick, stone or concrete, which satisfies the following specifications:
 - a) footings of minimum 225mm x 150mm concrete 15MPA or 300mm x 175mm brick laid in cement mortar;

- b) fences to be offset a minimum of 200mm at maximum 3000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3000mm centres;
 - c) expansion joints in accordance with the manufacturer's written instructions; and
 - d) the height of the fence to be a minimum of 1800mm.
- D. A composite fence which satisfies the following specifications for the brick construction:
- (1) a) brick piers of minimum 230mm x 230mm 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) the minimum ultimate strength of brickwork shall be 20MPA. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
 - d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
 - e) control joints in brickwork shall be provided with double piers at a maximum of 6 metre centres; or
- (2) a) brick piers of a minimum 230mm 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. A fence constructed of colour bonded cold formed steel comprising an integrated structure of posts, rails and infill sheets which complies with manufacturer's instructions and/or satisfies the following specifications:
- a) posts to be spaced at no greater than 2350mm centres;
 - b) post holes to be 250mm diameter with minimum in ground depth of :
 - 300mm in rock earth;
 - 600mm in clay/firm earth
 - 900mm in sand/loose fill
 - c) posts to be secured into the ground by filling to ground level with fully mixed wet concrete tapered above ground for approximately 50mm leaving gap to bottom rail height;

- d) posts and rails to be securely fastened on both side of top and bottom rails with no less than 9 16 x 16mm self-drilling screw placings per post as follows:
 - fasteners approximately 60mm from top of post at 40mm centres;
 - fence height of 1500mm - screw spacing of 250mm
 - fence height of 1800mm - screw spacing of 300mm;
- e) the last two panels of an unsupported end extending beyond front of house to be tapered so that low end is $\frac{1}{2}$ height;
- f) bottom rail to have drain holes;
- g) infill panels to be set between posts, into bottom rail, lapped and secured by top rail;
- h) garden fill not to be built up against bottom rail;
- i) fence shall not be used as a retaining wall;
- j) the height of the top rail to be a minimum of 1800mm.

F. A pine lap fence which satisfies the following specifications:

- a) All timber to be treated in accordance with AS 1604 - 1997.
- b) Posts to be a minimum 125mm x 75mm with a maximum spacing between posts of 2400mm centres.
- c) Corner posts struttued 2 ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts.
- d) Intermediate post to be double yankee struttued with 150 mm x 25mm x 450 mm struts.
- e) Alternatively posts may be encased in concrete as per the following specification:

Course Aggregate (approx 20mm) 4 parts
Fine Aggregate (sharp sand) 2.5 parts
Cement Fresh, Portland type GP 1 part
Clean water sufficient to produce a workable mixture
- f) All posts to have top splay cut to shed water and to be sunk at least 600mm into the ground.
- g) Rails to be 100mm x 38mm with maximum spacing 675mm centres with rails spanning maximum 4800mm fixed to each post with joints staggered.

- h) Palings to be either 150mm or 100mm wide with 17mm thick. Palings are to overlap 25mm each side.
- i) Rails and palings are to be fixed as per manufacturers specifications.
- j) Fence height to be a maximum of 1800mm.

Second Schedule

Clause 4(2)(b)

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT AND AN INDUSTRIAL LOT

Each of the following is a “sufficient fence” on a Commercial Lot and an Industrial Lot:

- A. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications:
 - a) corner posts to be minimum 50mm normal bore x 3.5 mm and with footings of a 225mm diameter x 900mm;
 - b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
 - c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post;
 - d) 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;
 - e) rail-less link, chain or steel mesh is to be to a height of 2000mm on top of which are to be three strands or barbed wire carrying the fence to a height of 2400mm; and
 - f) galvanised link mesh wire to be 2000mm in height and constructed of 50mm mesh 2.5mm 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 3.6m and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 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 constructed to the minimum specifications referred to in Item B of the First Schedule.
- C. A fence constructed of painted or galvanised steel or aluminium sheeting provided that this is used behind the building line to maximum height of 2400mm when supported on posts and rails.
- D. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in the First Schedule.

Third Schedule

Clause 4(2)(c)

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT

- A. A sufficient fence on a Rural Lot is a fence of posts and four strand wire construction, deemed to be capable of confining livestock normally kept on the property and constructed in accordance with manufacturer's instructions or generally accepted farming practices in the area.
- B. Materials such as asbestos, corrugated fibre cement, colour bonded metal sheeting or wooden pickets shall not be used as boundary fencing on a Rural Lot.