

## Local Government Act 1995

### SHIRE OF TOODYAY

#### LOCAL LAWS RELATING TO FENCING

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Shire of Toodyay resolved to make the following local laws on the 22nd day of July 1999

#### PART 1 - PRELIMINARY

##### Citation

1. These Local Laws may be cited as the Shire of Toodyay Local Laws Relating to Fencing.

##### Repeal

2. The Shire of Toodyay By-laws Relating to Fencing published in the Government Gazette of 12 July 1972, are repealed.

##### Interpretation

3. In these Local Laws, 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;

"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 licence 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 15(1);

"Residential Lot" means a lot 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;

"Special Rural Lot" means a lot where a special 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;

"sufficient fence" means a fence described in clause 4; and

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

## 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 and on a Special 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 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 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;
  - (d) a Residential Lot and a Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule; and
  - (e) a Special Rural 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.

### Sufficient Fences (continued)

- (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 1800mm in height; or
  - (b) the Building Surveyor so requires.

### **PART 3 - GENERAL**

#### **Dividing Fences**

5. (1) In determining an application for a building licence in respect of 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 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 7.5m of a thoroughfare of a height exceeding 1500mm.

#### **Maintenance of Fences**

8. 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, or unsightly.

#### **General Discretion of the Local Government**

9. (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 authorized to consider, whether the erection or retention of the fence would have an adverse effect on:

#### **General Discretion of the Local Government (continued)**

- (a) the safe or convenient use of any land; or
- (b) the safety or convenience of any person.

#### **PART 4 - FENCING MATERIALS**

##### **Fencing Materials**

- 10. (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**

- 11. (1) This clause does not apply to a fence constructed wholly or partly of razor wire.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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 - ELECTRIFIED AND RAZOR WIRE FENCES**

##### **Requirement for a Licence**

- 12. (1) An owner or occupier of a lot, other than a Rural Lot, shall not:
  - (a) have and use an electrified fence on that lot without first obtaining a licence under subclause (2); or

##### **Requirement for a Licence (continued)**

- (b) have a fence constructed wholly or partly of razor wire on that lot without first obtaining a licence under subclause (3).
- (2) A licence 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) A licence to have a fence constructed wholly or partly of razor wire shall not be issued:
- (a) if the fence is within 3m of the boundary of the lot;
  - (b) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.
- (4) An application for a licence referred to in subclauses (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.
- (5) An application for a licence referred to in subclauses (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.

#### **Transfer of a Licence**

13. (1) The holder of a licence referred to in clause 12 may transfer that licence to another occupier or owner of the lot where the licence is to be used only on that property for which the licence was approved;

#### **Cancellation of a Licence**

14. 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 clause 12(2) or 12(3) 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

### Notices of Breach

15. (1) Where a breach of any provision 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 7 - OFFENCES

### Offences and Penalties

16. (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

17. (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

18. 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.

**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 strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
  - (c) intermediate posts to be doubled yankee strutted 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 affixed securely 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 manufacturers 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 345mm x 345mm 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 345mm x 345mm x 2700mm centres bonded to the base wall; and
  - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified;

**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 nominal bore x 3.5mm 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 and with footings 225mm x 600mm;
  - (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 or single 4mm wire;
  - (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 of barbed wire carrying the fence to a height of 2400mm in accordance with Part 4, Section 11(3) of the Local Law; 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.

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

A sufficient fence on a Rural Lot is a fence of posts and wire construction, the minimum specifications for which are:

- (a) wire shall be high tensile wire and not less than 2.5mm. A minimum of five wires shall be used, these to be spaced equally and connected to posts for all fences;
- (b) posts shall be of indigenous timber or other suitable material including timber impregnated with a termite and fungicidal preservative 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 and shall be cut from indigenous timber or other suitable material.

