



***LOCAL GOVERNMENT ACT 1995***

***Shire of Merredin***

**LOCAL LAWS RELATING TO FENCING**

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## **Local Government Act 1995**

### *Shire of Merredin*

#### **LOCAL LAWS RELATING TO FENCING**

The Fencing Local Law was amended in 2017, by Council resolution in March 2017 (CMRef 81950) and Gazettal on 26 April 2017 (Special Issue No. 82).

It should be noted that a hard copy of *AS/NZS 3016:2002 Electrical Installations – Electric Safety Fences* referred to in this Local Law is available for viewing at the Merredin Regional Library, Coronation Street, Merredin during opening hours.

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Shire of Merredin resolved to make the following local laws on the 17th day of September 2002.

#### **PART 1 - PRELIMINARY**

##### **1. Citation**

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

##### **2. Repeal**

The Shire of Merredin By - laws Relating to Fencing, published in the *Government Gazettes* of 7 November 1980, 13 November 1992 and 26 May 1995, are repealed.

##### **3. Application of Local Laws**

These Local Laws apply throughout the district.

##### **4. Interpretation**

In these Local Laws, unless the context requires otherwise-

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

**“AS/NZS”** means an Australian Standard or an Australian/New Zealand Standard published by the Standards 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 5 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;

**“local government”** means the Shire of Merredin;

**“lot”** has the meaning given to it in and for the purposes of the *Planning and Development Act 2005*

**“notice of breach”** means a notice referred to in clause 15(1);

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

“**owner**” has the meaning given to it in the Act;

“**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 6; and

“**town planning scheme**” means a town planning scheme of the local government made under the *Planning and Development Act 2005*

## 5. Fees & Charges

All fees and charges applicable under these Local Laws 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

### 6. Sufficient Fences

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence, unless all owners of lands which adjoin the relevant boundary agree to erect a fence which, though different does not fail to comply with the requirements of a sufficient fence.

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- (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 Schedule 1.
  - (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 Schedule 2;
  - (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 Schedule 3;
- (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 Schedule 1;
  - (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 Schedule 2;
  - (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 Schedule 3;
  - (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 Schedule 1; 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 Schedule 3.
- (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 Schedule 2.
- (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**

### **7. Fences Within Front Setback Areas**

- (1) A person shall not, without the written consent of the Building Surveyor, erect a free-standing fence greater than 1200mm in height, within the front set-back area of a Residential Lot within the district.
- (2) The Building Surveyor may approve the erection of a fence greater than 1200mm but not exceeding 1500mm in the front setback area of a Residential Lot.
- (3) *(Deleted 2017)*

### **8. Fences on a Rural Lot**

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.

### **9. Maintenance of Fences**

- (1) 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.
- (2) A person shall not fill or excavate behind a fence so as to undermine the structural integrity of the fence.

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

- (1) Notwithstanding the provisions of clause 6, the local government may approve the erection or repair of a dividing fence which is not a sufficient fence where all of the owners of the lots to be separated by the dividing fence make an application for approval for that purpose.
- (2) In determining whether to grant its approval under subclause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on:
  - (a) the safe or convenient use of any land;
  - (b) the safety or convenience of any person; or
  - (c) the visual amenity of the locality.

## **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 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.

## **12. Barbed Wire and Broken Glass Fences**

- (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 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 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 subclause (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 to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.
- (6) 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**

### **13. Requirements for a Licence**

- (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
  - (b) construct a fence 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, when constructed will comply with *AS/NZS 3016:2002 Electrical Installations – Electric Safety Fences* (as amended from time to time); 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 under this clause must:
- (a) be in the form determined by the local government;
  - (b) be accompanied by any fee imposed by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*; and
  - (c) include:
    - i. A written consent signed by the owner of the land on which the fence is located or proposed to be located, unless the applicant is the owner of that land; and
    - ii. Any further information which may be required by the local government.
- (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.
- (6) Where the local government approves an application for a licence under this clause, it shall issue a licence to the applicant in the form determined by the local government.

#### **14. Transfer of a Licence**

A licence referred to in clause 13 shall transfer with the land to any new occupier or owner of the lot, except where the licence has been cancelled under clause 15.

## 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 clause 13(2) or 13(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

### 16. Notices of Breach

- (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.
- (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 power of entry exercised by the local government under these local laws is subject to Part 3, Division 3 of the *Local Government Act 1995*.

## 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 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.

**18. Modified Penalties**

- (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 \$200.

**19. 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 the form set out in 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 the form set out in Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

## Clause 6(2)(a)

**Schedule 1****SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT**

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

- A. A fully enclosed timber fence built to manufacturer’s specifications or in accordance with established construction techniques, the height of the fence to be 1800mm except with respect to the front setback area for which there is no minimum height but which is subject to clause 7.
- B. A fence constructed of corrugated fibre reinforced pressed cement or steel 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 or steel 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 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.
- 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 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 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 clause 7, 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 all; and
  - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

## Clause 6(2)(b)

**Schedule 2****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 3.5mm 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 clause 12(3) of these Local Laws; 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 or steel sheeting constructed to the minimum specifications referred to in Item B of the First Schedule.
- C. A fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1800mm but no greater than 2400mm.
- D. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in the First Schedule.

## Clause 6(2)(c)

**Schedule 3****SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT**

- (1) In the case of a non-electrified fence, 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, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases.
  - (b) posts shall be of indigenous timber or other suitable material including -
    - timber impregnated with a termite and fungicidal preservative;
    - standard iron star pickets; or
    - concrete;
  - (c) if timber posts are used, posts are to be 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
  - (d) strainer posts, if timber, shall be not less than 2250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000mm in the ground and set at all corners, gateways and fence line angles but not exceeding 200 metres apart.
- (2) An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with (1).