

**SHIRE OF WYNDHAM - EAST KIMBERLEY**

**LOCAL LAWS RELATING TO FENCING  
2003**

*Local Government Act 1995*

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**TABLE OF CONTENTS**

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**1. PART 1 - PRELIMINARY**

- 1.1 CITATION
- 1.2 APPLICATION OF LOCAL LAWS
- 1.3 INTERPRETATION
- 1.4 OBJECTIVES
- 1.5 LICENCE FEES & CHARGES
- 1.6 SAVINGS

**2. PART 2 - SUFFICIENT FENCES**

- 2.1 SUFFICIENT FENCE - MINIMUM STANDARD

**3. PART 3 - GENERAL**

- 3.1 DANGEROUS FENCES
- 3.2 HEIGHT OF FENCING
- 3.3 MATERIALS AND CONSTRUCTION
- 3.4 MAINTENANCE OF FENCES

**4. PART 4 - NOTICES**

- 4.1 NOTICES TO OWNERS

**5. PART 5 - OFFENCES**

- 5.1 OFFENCES AND PENALTIES
- 5.2 MODIFIED PENALTIES
- 5.3 FORM OF NOTICES

**FIRST SCHEDULE**

**SECOND SCHEDULE**

**THIRD SCHEDULE**

**FOURTH SCHEDULE**

## LOCAL GOVERNMENT ACT 1995

### SHIRE OF WYNDHAM - EAST KIMBERLEY

#### LOCAL LAWS RELATING TO FENCING 2003

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Shire of Wyndham-East Kimberley resolved to make the following local laws on the 21<sup>st</sup> October 2003.

#### 1. PART 1 - PRELIMINARY

##### 1.1 Citation

These Local Laws may be cited as the Shire of Wyndham-East Kimberley Local Laws Relating to Fencing.

##### 1.2 Application of Local Laws

These Local Laws apply throughout the district.

##### 1.3 Interpretation

In these Local Laws, unless the context requires otherwise:

"**boundary**" means the cadastral boundary of a lot or lots and includes any boundary on a strata title lot;

"**Building Surveyor**" means a Building Surveyor of the local government.

"**dangerous**" in respect of a fence means a fence or part of a fence which presents a danger or risk of injury to persons and may include a fence which is perilous, hazardous, unsafe or potentially injurious; and without limiting the generality of the foregoing includes a fence which is likely to collapse or fall, by reason of its faulty design, location or construction, deterioration of materials, damage by termites, decay, changes in ground level or other cause whatsoever; but does not include an electric fence which is constructed in accordance with these Local Laws;

"**dividing fence**" has the meaning given to it in and for the purposes of the *Dividing Fences Act 1961*;

"**fence**" includes a wall, fence, enclosure, barrier, freestanding wall or retaining wall, abutting a thoroughfare on or near a boundary;

"**front setback area**" means that portion of a lot situated within 6m of the thoroughfare alignment, including a secondary thoroughfare alignment;

"**height**" in relation to a fence means the vertical distance between -

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

"**Industrial and Commercial Zone**" means the portions of the district classified in a Town Planning Scheme in the following zones: Town Centre, Mixed Business, Light Industry, Local Centre, Tourist, Composite Industry, Industrial and Special Site zone.

"**local government** " means the Shire of Wyndham - East Kimberley;

"**Residential Zone**" means the portions of the district classified in a Town Planning Scheme as a Residential or Residential Development zone;

"**Rural Zone**" means the portions of the district classified in a Town Planning Scheme in the following zones: Rural, General Rural, Rural Agriculture, Rural Pastoral, Rural Living, and Special Rural zone;

"sheet" in relation to the materials used in the construction of fencing, means material in the form of panels such as fibre cement or pressed metal and includes the term "sheeting", but is not restricted to such materials;

"thoroughfare alignment" means the boundary between the land comprising a thoroughfare and the land that abuts thereon, unless a new thoroughfare alignment is prescribed under the provisions of a Town Planning Scheme or a Local Law under the provisions of the *Town Planning Act* or a Local Law under the provisions of the *Local Government Act*, in which case that new thoroughfare alignment so prescribed prevails;

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

#### **1.4 Objectives**

The objectives of these Local Laws are to -

- (a) prescribe minimum standards for fencing within the district for the purposes of the *Dividing Fences Act 1961*; and
- (b) ensure that adequate standards of safety, structural sufficiency and amenity in relation to fencing are maintained throughout the district.

#### **1.5 Licence Fees & Charges**

All licence 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 of the *Local Government Act 1995*.

#### **1.6 Savings**

- (1) A fence that was erected and maintained lawfully under previous Local Laws of the Shire of Wyndham - East Kimberley shall not become unlawful merely by reason of the repeal of those Local Laws.
- (2) Nothing in these Local Laws shall be deemed to interfere with the right of the Crown or any Statutory Authority or Agency to carry out a power or duty authorised by law.

### **2. PART 2 - SUFFICIENT FENCES**

#### **2.1 Sufficient Fence - Minimum Standard**

- (1) For the purposes of the *Dividing Fences Act 1961* -
  - (a) a fence constructed in accordance with the specifications set out in the First Schedule is hereby prescribed as a sufficient fence within Residential Zones.
  - (b) a fence constructed in accordance with the specifications set out in the Second Schedule is hereby prescribed as a sufficient fence within the Industrial and Commercial Zones.
  - (c) a fence constructed in accordance with the specifications set out in the Third Schedule is hereby prescribed as a sufficient fence within the Rural Zones.
  - (d) a boundary fence between a Residential Zone and another zone shall comply with the standard prescribed for the Residential Zone unless the local government has otherwise approved in writing.
  - (e) where a fence is erected on the boundary between Industrial or Commercial Zones, and Rural Zones, a sufficient fence shall comply with the specification contained in either the Second or Third Schedule as determined by the local government.
- (2) A fence may be constructed to a higher specification than that prescribed for a sufficient fence in the relevant zone provided that the fence is constructed and maintained in accordance with these Local Laws

### **3. PART 3 - GENERAL**

#### **3.1 Dangerous Fences**

An owner of land on which a fence is erected or in relation to which a boundary fence is erected shall not permit the erection or continued presence of a dangerous fence.

#### **3.2 Height of Fencing**

- (1) In a Residential Zone a person shall not, without the prior approval of the local government in writing erect or commence to erect -
  - (a) a fence higher than 1000mm on the thoroughfare alignment or within the front setback area;
  - (b) a dividing fence behind the front setback area, higher than 1.8m; or
  - (c) a fence adjoining a vehicular access way onto any allotment exceeding 1000mm in height for a distance of 1.8m, measured from the point of intersection of the access way and thoroughfare alignment as depicted in the diagram in the Fourth Schedule.
- (2) No person shall erect on land situated at the intersection of two thoroughfares a fence on or adjacent to the thoroughfare alignment greater than 1000mm in height, within 6m of that thoroughfare intersection without the prior approval of the local government. The local government shall not grant its approval under this subclause unless it is satisfied that there are adequate sight lines for both pedestrians and vehicular traffic.
- (3) No person shall erect a fence of a height exceeding the height specified in sub clause (1) of this clause and in the Schedule applicable to the zone in which the land is situated, without the approval of the local government. The local government shall not grant its approval under this subclause unless it is satisfied that the proposed fence will complement the streetscape and not detract from the amenity of the locality. In any case the maximum height of a fence within the front setback area shall be 1.8m.

#### **3.3 Materials and Construction**

- (1) A person shall not, without the prior approval of the local government in writing, erect or commence to erect a fence—
  - (a) constructed of a material other than timber, fibre-cement, brick, concrete, masonry, wrought iron, tubular steel, colorbond, bound brushwood or any other material specified in whichever of the First, Second or Third Schedules related to the zone in which the fence is to be erected;
  - (b) constructed of pre-used material.
- (2) Notwithstanding subclause (1)(a) of this clause, a fence shall not be constructed of sheeting in a Rural Zone.
- (3) The local government shall not grant its approval under subclause (1)(a) unless it is satisfied that the proposed fence will complement the streetscape and not detract from the amenity of the locality.
- (4) Sheet material shall not be used in the construction of front fencing unless it takes the form of infill panels between columns with a maximum spacing of 4 metres, and which otherwise accords with a form of fencing approved by the local government.
- (5) No person shall erect a fence wholly or partially constructed of barbed wire or other similar wire except—
  - (a) on land in a Rural Zone; or
  - (b) on land in an Industrial Zone where such wire is at a height of not less than 1.8m.
- (6) No person shall erect an electric fence in the district unless:

- (a) it is on land within the Rural, Industrial or Commercial zones;
- (b) the prior approval of the local government has been granted if in the Industrial or Commercial Zone;
- (c) any conditions imposed by the approval granted pursuant to paragraph (b) of this subclause have been complied with; and
- (d) the fence is constructed and maintained in accordance with—
  - (i) *Australian Standard 3129/1989*;
  - (ii) *Australian Standard 3014* in the case of an electric fence on land in a Rural zone; or
  - (iii) *Australian Standard 3016* in the case of an electric fence on land in an Industrial or Commercial zone.

### **3.4 Maintenance of Fences**

The owner of land on which a fence is erected shall maintain the fence so as to prevent it from becoming dangerous, in need of repair, dilapidated, unsightly or in the opinion of the local government, prejudicial to the amenity or value of property in the neighbourhood.

## **4. PART 4 - NOTICES**

### **4.1 Notices to Owners**

- (1) The local government may give notice in writing to the owner of any land upon which is erected a fence which is—
  - (a) in the opinion of the local government, dangerous, in need of repair, dilapidated; or
  - (b) in the opinion of the local government unsightly or prejudicial to the amenity or value of property in the neighbourhood; or
  - (c) erected or maintained contrary to the provisions of these Local Laws,

requiring the owner to pull down, remove, repair, paint or otherwise maintain the fence within a time stipulated in the notice.

## **5. PART 5 - OFFENCES**

### **5.1 Offences and Penalties**

- (1) An owner who fails to comply with a notice under clause 4.1 (1) 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.

### **5.2 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 \$100.

### 5.3 Form of Notices

For the purposes of these Local Laws -

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

### Residential Zone

For the purposes of the *Dividing Fences Act 1961*, a sufficient fence within a Residential Zone is a corrugated metal fence (Neetascreen or similar) erected as follows—

- (a) an above ground height of 1.5 m behind the front setback area;
- (b) a minimum in-ground length of 33 percent of the total length of the post with a minimum in-ground length of 850mm;
- (c) corrugated metal sheets are to be lapped, and capped with a “snap-fit” type capping in accordance with the manufacturers’ specifications;

## SECOND SCHEDULE

### Industrial and Commercial Zones

For the purposes of the *Dividing Fences Act 1961*, a sufficient fence within the Industrial or Commercial Zones shall accord with the following specifications—

- (a) a fence consisting of rail-less link mesh to a height of 1.8m above finished ground level supported by galvanised steel posts and bracing stays encased in concrete footings. Specification of materials and construction in accordance with *Australia Standard 1725-75*;
- (b) link mesh shall be poly vinyl chloride coated or galvanised 2.5mm wire, formed into a uniform 50mm mesh. The link shall be strained and neatly secured and laced to supporting members in accordance with *Australian Standard 1725-75*;
- (c) vehicle entry gates shall be covered with link mesh to match the fence and strained and neatly laced to the frame. The gates shall be constructed and fitted to gateposts in accordance with *Australian Standard 1725-75* and restrained from opening by 16mm galvanised drop bolts in keepers set in concrete;

## THIRD SCHEDULE

### Rural Zones

For the purposes of the *Dividing Fences Act 1961*, a sufficient fence within the rural Zones shall accord with the following specifications.

- (a) the fence shall be constructed of sawn, split or round wooden posts set not less than 600mm in the ground and spaced not more than 3600mm apart with strainer posts set 1000mm in the ground and suitably and securely strutted at all corners, gateways and fence-line angles. Wire shall be wrapped around the strainer and strained tight. Posts are to be threaded with not less than 5 plain galvanised wires through evenly spaced 12mm diameter holes;
- (b) star pickets or concrete posts may be used instead of wooden posts. Installation shall be the same as for wooden posts;
- (c) the height of the fence shall be 1.2m above finished ground level;
- (d) the materials used must accord with the following specifications;
  - (i) wire shall be steel galvanised wire of not less than 2.5mm diameter;
  - (ii) posts if of timber, shall be cut not less than 1800mm long by 100mm diameter at the small end if round or 125mm x 50mm if split or sawn;

- #### FOURTH SCHEDULE



B Johnson, **President**

8