

Local Government Act 1995

City of Gosnells Fencing Local Law 2017

Under the powers conferred on it by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Gosnells resolved on 23 May 2017 to make the following local law.

Part 1—Preliminary

1.1 Citation

This local law may be cited as the *City of Gosnells Fencing Local Law 2017*.

1.2 Commencement

This local law commences 14 days after the day on which it is published in the *Government Gazette*.

1.3 Purpose and effect

- (1) The purpose of this local law is to prescribe a sufficient fence and the standard for the construction of fences throughout the district.
- (2) The effect of this local law is to establish the minimum requirements for fencing within the district.

1.4 Application

This local law applies throughout the district.

1.5 Repeal

The City of Gosnells Local Laws Relating to Fencing 2000 published in the *Government Gazette* on 9 August 2000 and amendments published in the *Government Gazette* on 4 September 2000 are repealed.

1.6 Definitions

- (1) In this local law—

Act means the *Dividing Fences Act 1961*;

AS/NZS means an Australian or Australian/New Zealand Standard as published by Standards Australia and as amended from time to time;

Note:

Australian Standards can be accessed online at the SAI Global website, at the following URL:

<http://infostore.saiglobal.com>

barbed wire fence means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals;

boundary fence means a fence, other than a dividing fence, that separates private land from land that is local government property or a thoroughfare;

building permit has the meaning given to it in the *Building Act 2011*;

commercial lot means a lot where a commercial use—

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

district means the district of the local government;

district planning scheme means a local planning scheme of the local government made under the *Planning and Development Act 2005*;

dividing fence has the meaning given to it in the Act;

electrified fence means a fence carrying or designed to carry an electric charge;

fence means any structure, not including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

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 district planning scheme; and
- (b) is or will be the predominant use of the lot;

local government means the City of Gosnells;

local government property has the meaning given to it in the *Local Government Act 1995*;

lot has the meaning given to it in the *Planning and Development Act 2005*;

primary street means the sole or principal thoroughfare that provides access to the major entry (front door) to the dwelling;

public open space means land used or intended for the purposes of public recreation;

razor wire fence means a coiled strong wire with pieces of sharp cutting edges set across it at close intervals;

Regulations means *the Local Government (Functions and General) Regulations 1996*;

residential lot means a lot where a residential use—

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

Schedule means a Schedule to this local law;

street boundary means the boundary between the land comprising the primary street and the land that abuts thereon;

street setback means the horizontal distance between the street boundary and a building, measured at right angles (90 degrees) to the street boundary;

street setback area means the area between the street boundary and the street setback;

sufficient fence means a fence described in clause 2.1;

thoroughfare has the meaning give to it in the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government;

visually permeable has the meaning given to the term in State Planning Policy 3.1 - Residential Design Codes.

1.7 Relationship with other laws

- (1) In the event of any inconsistency between the provisions of a district planning scheme and the provisions of this local law, the provisions of the district planning scheme are to prevail.
- (2) Nothing in this local law affects the need for compliance, in respect of a fence, with—
 - (a) any relevant provisions of a district planning scheme; and
 - (b) any relevant provisions that apply if a building permit is required for that fence under the *Building Act 2011* or *Building Regulations 2012*.

Part 2—Sufficient fences

2.1 Meaning of ‘sufficient fence’

- (1) For the purposes of the Act, a dividing fence is a sufficient fence in a residential area if it is constructed on or near the boundary between a residential lot and —
 - (a) another residential lot;
 - (b) a commercial lot;
 - (c) an industrial lot;
 - (d) a rural lot; or
 - (e) public open space,

and is constructed and maintained to a minimum standard in accordance with the specifications in Schedule 1.

- (2) For the purposes of the Act, a dividing fence is a sufficient fence in an industrial or commercial area if it is constructed on or near the boundary between a commercial lot or an industrial lot and a—

- (a) commercial lot;
- (b) industrial lot;
- (c) rural lot,

and is constructed and maintained to a minimum standard in accordance with the specifications in Schedule 2.

- (3) For the purposes of the Act, a dividing fence is a sufficient fence in a rural area if it is constructed on or near the boundary between two or more rural lots and is constructed and maintained to a minimum standard in accordance with the specifications in Schedule 3.

2.2 Erecting a fence

Notwithstanding any other provisions in this local law, a person must not erect a dividing fence or fence that is not a sufficient fence, unless it is designed by a suitably qualified structural engineer and constructed in accordance with that design.

Part 3—Fencing materials and requirements

3.1 Fences that do not require a building permit

Fences that do not require a building permit are dealt with in the *Building Regulations 2012*.

3.2 Prohibited fencing materials

- (1) In constructing a fence a person must not use—
- (a) broken glass or any other potentially harmful projections or material;
 - (b) material that is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause.

3.3 Gates in boundary fences

A person shall not install a gate in a boundary fence which does not open—

- (a) into the lot; or
- (b) by sliding parallel on the inside of the fence, which it forms part of, when closed,

without first obtaining the written approval of the local government.

3.4 Fencing materials requiring written approval

- (1) A person shall not construct a—
- (a) barbed wire fence;
 - (b) electrified fence; or
 - (c) razor wire fence,

without first obtaining the written approval of the local government.

- (2) Subclause (1a) does not apply to an Industrial, Commercial or Rural lot where the following conditions are met—
- (a) on an Industrial or Commercial Lot where the barbed wire is carried on posts and the bottom row of wire is not nearer than 2000mm to the ground level.
 - (b) if the posts which carry the barbed wire referred to in subclause (2a) 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.
 - (c) 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.
- (3) Approval for an electrified fence will not be granted on an Industrial or Commercial lot unless the fence complies with AS/NZS 3016:2002 - Electrical Installations - Electric Security Fences.
- (4) Subclause 1(b) does not apply to a Rural lot where the electrified fence complies with AS/NZS 3016:2002 - Electrical Installations - Electric Security Fences, and any wire that carries an electric charge is located at least 300mm away from all boundaries on the lot.
- (5) Any barbed wire fence, electrified fence or razor wire fence shall be constructed in accordance with the conditions of written approval issued by the local government.

3.5 Masonry fences

A masonry fence must be constructed in accordance with *AS3700-2011 Masonry structures*.

Part 4—Objections and appeals

4.1 Objections and appeals

Where the local government makes a decision under this local law the provisions of Division 1 of Part 9 of the *Local Government Act 1995* and regulation 33 or the Regulations shall apply to that decision.

Part 5—Offences and penalties

5.1 Offences and general penalties

A person who fails to comply with, or who contravenes any provision of this local law commits an offence and is liable on conviction to a penalty of not less than \$250 and a maximum penalty of \$5,000 and, if the offence is a continuing offence, to a maximum daily penalty of \$500 for every day or part of a day during which the offence continues.

5.2 Infringements and modified penalties

- (1) An offence against a clause specified in Schedule 4 is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.

- (2) The amount appearing in the final column of Schedule 4 directly opposite a prescribed offence in that Schedule is the modified penalty for that prescribed offence.

5.3 Form of infringement notices

For the purposes of this local law—

- (a) the form of the infringement notice given under section 9.16 of the *Local Government Act 1995* is that of Form 2 in Schedule 1 of the Regulations;
- (b) the form of the notice given under section 9.20 of the *Local Government Act 1995* withdrawing an infringement notice is that of Form 3 in Schedule 1 of the Regulations.

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Schedule 1 - Specifications for a sufficient fence on a residential lot

1. Where a fence separates a residential lot from another residential lot, a commercial lot, an industrial lot or a rural lot, a sufficient fence is a fence constructed of non permeable materials designed specifically for use as a fence, or masonry, and installed in accordance with the manufacturer's specifications to a height of 1.8 metres.
2. Where a fence separates a residential lot from public open space, subject to clause 3, a sufficient fence is a fence constructed of materials designed specifically for use as a fence, or masonry, and installed in accordance with the manufacturer's specifications such that at least 50% of the fence is visually permeable.
3. Where a residential lot abuts public open space on more than one side, a sufficient fence is a fence constructed of materials designed specifically for use as a fence, or masonry, and installed in accordance with the manufacturer's specifications provided that the fencing on the lot that abuts public open space is visually permeable to a length equivalent to at least 50% of the length of the longest boundary that abuts public open space.

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Schedule 2 - Specifications for a sufficient fence on a commercial lot or an industrial lot

A sufficient fence is a fence that meets the specifications in Schedule 1, or a chain link fabric fence erected in accordance with *AS1725.1-2010 Chain link fabric fencing* with a height of 1.8 metres.

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Schedule 3 - Specifications for a sufficient fence on a rural lot

A sufficient fence is a fence that meets the specifications in Schedules 1 or 2 but to a height of at least 1.2 metres, or a fence of post and wire construction erected at a height of at least 1.2 metres and containing a minimum of 5 wires, with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through and each wire connected to posts in all cases.

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Schedule 4 - Prescribed offences

[Clause 5.2]

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
2.2	Erecting a fence that is not a sufficient fence	200
3.2(1)(a)	Affix, or use, any broken glass or harmful projections or material on a fence	250
3.2(1)(b)	Use material that is likely to collapse or fall from any cause	250
3.3(a)	Erect a gate in a fence not opening into the lot	200
3.3(b)	Erect a gate in a fence not sliding parallel and inside of fence	200
3.4(1)	Erect a fence using barbed wire, razor wire, or electrified fence without written approval of the local government	250
3.4(2)	Failing to comply with a condition for the erection of a barbed wire fence	250
3.5	Construct a masonry fence not in accordance with AS3700-2011 Masonry Structures	200

Dated 26/5/17.....

The Common Seal of the City of GOSNELLS was affixed by authority of a resolution of the Council in the presence of—

Olwen Searle
.....
OLWEN SEARLE JP
Mayor

Ian Cowie
.....
IAN COWIE PSM
Chief Executive Officer

