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LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961

TOWN OF BASSENDEAN

FENCING LOCAL LAW 2013

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LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961

TOWN OF BASSENDEAN

FENCING LOCAL LAW 2013

Under the powers conferred by the *Dividing Fences Act 1961*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the *Town of Bassendean* resolved on 26th November 2013 to adopt the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Town of Bassendean Fencing Local Law 2013*.

1.2 Repeal

The *Town of Bassendean Fencing Local Law 2010* published in the *Government Gazette* of 31 January 2011 is repealed.

1.3 Application of local law

This local law applies throughout the district.

1.4 Definitions

In this local law, unless the context requires otherwise—

Act means the *Dividing Fences Act 1961*;

amenity means all those factors that combine to form the character of an area and include present and likely future amenity;

approval means a favourable decision in respect of an application which is in writing, may be subject to conditions and which allows a proposal to proceed;

application means the completed form and associated documents, if any, that is lodged by a person seeking an approval as required by this local law;

AS1725.1-2010 means the standard published by Standards Australia as AS1725.1-2010 Chain link fabric fencing, as amended from time to time;

boundary fence has the meaning given to it for the purposes of the Act;

building line means a theoretical line created by the forward most wall of the dominant building facing a street frontage. In the absence of a dominant building the opposite/rear boundary shall be treated as the building line;

commercial lot means a lot where a commercial use—

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

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, a barbed wire fence or a razor wire fence which has been approved by the local government and has been constructed and maintained in accordance with the approval;

district means the district of the local government;

dividing fence has the meaning given to it in and for the purposes of the Act;

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;

front setback area means that portion of a lot which is situated within the front setback, as determined by a local planning scheme, including a secondary street alignment;

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

local government means the Town of Bassendean;

local planning scheme means a local planning scheme of the local government made under the *Planning and Development Act 2005* in force in the district from time to time;

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 clauses 2.2 and 4.1;

residential lot means a lot where a residential use—

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

Schedule means a Schedule to this local law;

setback area means that portion of a lot which is situated within a setback, as determined by a local planning scheme;

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, but is not restricted to such materials; and

sufficient fence means a fence described in Part 3.

1.5 Objectives

The objectives of this local law are to—

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

1.6 Licence fees and charges

All licence fees and charges applicable under this local law shall be determined by the local government from time to time in accordance with section 6.16 of the *Local Government Act 1995*.

PART 2—GENERAL REQUIREMENTS

2.1 Maintenance of fences

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

2.2 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 the property in the neighbourhood; or
- (c) erected or maintained contrary to this local law;

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

(2) Any notice required to be served under this Part shall be delivered personally to the person to whom it is directed, or sent by security post to the last known address of that person.

2.3 Fence erected under previous law

A fence that was erected and maintained lawfully under a previous local law of the local government shall not become unlawful merely by reason of the revocation of that local law.

2.4 General discretion

(1) Notwithstanding other sections in this local law, the local government may consent to the erection or repair of a fence that does not comply with a requirement or standard of this local law.

(2) In determining whether to grant its approval to the erection or repair of any fence, the local government may consider, in addition to any other matter, whether the erection or retention of the fence would have an adverse affect on—

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

2.5 Other requirements

Nothing in this local law affects the need for compliance, in respect of a fence with—

- (a) any relevant provisions of a local planning scheme; and
- (b) any relevant provisions that apply if a building permit under the *Building Act 2011* is required for that fence.

PART 3—SUFFICIENT FENCES

3.1 Sufficient fences on residential lots

For the purposes of the Act, a sufficient fence, on or near a common boundary, excluding a fence located between a street frontage boundary and a point 1 metre behind the building line, or, a front setback area, whichever is the greater, between—

- (a) Two or more residential lots not exceeding 2000 square metres is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 1;
- (b) a residential lot not exceeding 2000 square metres and a residential lot 2000 square metres or greater in area is a dividing fence or a boundary fence constructed and maintained in accordance with the requirements of Schedule 1; and
- (c) Two or more residential lots of 2000 square metres or greater in area is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2.

3.2 Sufficient fences on commercial or industrial lots

For the purposes of the Act, a sufficient fence on or near a common boundary, excluding a fence located between a street frontage boundary and a point 1 metre behind the building line, or, a front setback area, whichever is the greater, between 2 or more commercial and/or industrial lots is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.

3.3 Sufficient fences on adjoining residential and commercial or industrial lots

For the purposes of the Act, a sufficient fence on or near a common boundary, excluding a fence located between a street frontage boundary and a point 1 metre behind the building line, or, a front setback area, whichever is the greater, between an industrial/commercial lot and a residential lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of—

- (a) Schedule 1 where the residential lot does not exceed 2000 square metres in area; or
- (b) Schedule 2 where the residential lot exceeds 2000 square metres in area.

3.4 Sufficient fence is not mandatory except for the purposes of the Act

A fence on or near a common boundary between 2 or more properties is not limited under this local law to a fence outlined in Schedule 1, Schedule 2 or Schedule 3 except for the purposes of the Act.

PART 4—NOTICES OF BREACH

4.1 Notice of breach

(1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot.

(2) A notice issued under subclause (1) must—

- (a) specify the provision(s) of this local law that have been breached;
- (b) specify the particulars of the breach; and
- (c) state that the owner of the lot is required to remedy the breach within 28 days from the giving of the notice; and
- (d) state the rights of appeal and/or objection available to the owner of the lot.

PART 5—OBJECTIONS AND REVIEW

5.1 Right of objection and review

Where the local government under this local law has—

- (a) refused an application made for approval to construct or alter a fence;
- (b) granted an approval subject to conditions and the person(s) objects to one or more of those conditions; or
- (c) served a notice and the person(s) on whom the notice is served objects to the terms of the notice, the affected person(s) may exercise a right of objection or review pursuant to Division 1 Part 9 of the *Local Government Act 1995*.

PART 6—OFFENCES AND PENALTIES

6.1 Offences and penalties

(1) An owner who fails to comply with a notice issued under clause 4.1 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 this local law 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.

6.2 Modified penalties

(1) An offence against any provision of this local law 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 this local law is **\$100**.

6.3 Form of notices

For the purposes of this local law—

- (1) 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*; and
- (2) 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*.

Schedule 1

Residential A—Lots less than 2000 square metres in area

(Clauses 3.1, 3.3, 3.4)

For the purposes of the Act, a sufficient fence on residential lots less than 2000 square metres in area is a colourbond post and panel corrugated sheet metal fence erected as follows—

- (a) erected in accordance with the manufacturers specifications;
- (b) an above ground height of 1.8 metres located on or near a common boundary excluding a fence located within a front setback area; and
- (c) where a difference in levels exists on opposite sides of the common boundary at any point the height of the fence will be measured from the higher ground.

N.B. A dividing fence is not required in the front setback area.

Schedule 2

Residential B—Lots equal to or greater than 2000 square metres in area

(Clauses 3.1, 3.3, 3.4)

For the purposes of the Act, a sufficient fence on residential lots equal to or greater than 2000 square metres in area is a timber post and strained wire fence erected as follows—

- (a) erected in accordance with the manufacturers specifications;
- (b) contain not less than 5 plain galvanised wires, evenly spaced, running the length of the fence;
- (c) an above ground height of 1.2 metres located on or near a common boundary excluding a fence located within a front setback area; and
- (d) where a difference in levels exists on opposite sides of the common boundary at any point the height of the fence will be measured from the higher ground.

N.B. A dividing fence is not required in the front setback area.

Schedule 3

Industrial and Commercial

(Clauses 3.2, 3.4)

For the purposes of the Act, a sufficient fence on industrial or commercial lots is chain link fabric fencing erected as follows—

- (a) erected in accordance with *AS1725.1-2010*;
- (b) an above ground height of 1.8 metres located on or near a common boundary excluding a fence located within a front setback area; and

- (c) where a difference in levels exists on opposite sides of the common boundary at any point the height of the fence will be measured from the higher ground.

N.B. A dividing fence is not required in the front setback area.

A copy of *AS1725.1-2010 Chain link fabric fencing* can be accessed through the Town if required.

Dated 9th January 2014.

The Common Seal of the Town of Bassendean was affixed by authority of a resolution of the Council in the presence of—

Cr J. GANGELL, Mayor.
Mr B. JARVIS, Chief Executive Officer.
