



WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

4385



PERTH, FRIDAY, 3 SEPTEMBER 1999 No. 171 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

LOCAL GOVERNMENT ACT 1995

**SHIRE OF
DONNYBROOK/BALINGUP**

**LOCAL LAWS RELATING TO
FENCING**

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Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Shire of Donnybrook/Balingup resolved to make the following local laws on the 28th day of June 1999.

PART 1—PRELIMINARY**Citation**

1. These Local Laws may be cited as the Shire of Donnybrook/Balingup Local Laws Relating to Fencing.

Repeal

2. The Shire of Donnybrook/Balingup By-laws Relating to Fencing published in the *Government Gazette* of 17th December 1982, are repealed.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 14(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;

"Rural Residential Lot" means a lot where a rural 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;

"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 Residential Lot" means a lot where a special residential use—

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

"sufficient fence" means a fence described in the schedules; 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 without prior approval of Council.

(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 Rural Lot, Rural Residential Lot and on a Special Residential 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 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;

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

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 on a Rural Lot

6. 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

7. 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, unsightly or prejudicial to the amenity of the locality.

General Discretion of the Local Government

8. (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—

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

PART 4—FENCING MATERIALS

Fencing Materials

9. (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

10. (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 FENCES

Requirement for a Licence

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

(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) An application for a licence referred to in subclauses (2) 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.

(4) An application for a licence referred to in subclauses (2) 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

12. (1) The holder of a licence referred to in clause 11 may transfer that licence to another occupier or owner of the lot only with the written approval of the local government.

(2) The application for a transfer of a licence shall be—

- (a) made by the proposed transferee;
- (b) in the form determined from time to time by the local government;
- (c) signed by the holder of the licence;
- (d) accompanied by the fee determined by the local government from time to time; and
- (e) accompanied by such other information as the local government may require to determine the application.

(3) The local government may:

- (a) approve the application for a transfer of the licence;
- (b) approve the application for a transfer of the licence subject to such conditions as it thinks fit; or
- (c) refuse to approve the application for a transfer of the licence.

Cancellation of a Licence

13. 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 14(2) or 14(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**

14. (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**

15. (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

16. (1) An offence against any provision of these local laws is a prescribed offence for the purposes of section 9.16 (1) of the Act.

(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

17. For the purposes of these local laws—

- (a) the form of the infringement notice referred to in section 9.17 of the Act is to be in or substantially in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
- (c) the form of the notice referred to in section 9.20 of the Act 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

**SPECIFICATIONS FOR A SUFFICIENT FENCE
WITHIN A RESIDENTIAL ZONE**

The following specifications and requirements constitute a "sufficient fence", for the purposes of the Dividing Fences Act—

FENCE HEIGHTS

1. A dividing fence shall not exceed the following heights—

- (a) Behind the setback area – 1800mm
- (b) Within the setback area – 1000mm

FENCE MATERIALS

2. May consist of any of the following—

- (a) Corrugated Fibre Cement Sheeting,
- (b) Steel Panel
- (c) Timber

CONSTRUCTION STANDARDS AND MINIMUM SPECIFICATIONS*Corrugated Fibre Cement Sheeting*

3. A self supporting fence constructed of Corrugated Fibre Cement Sheeting shall be erected in accordance with the following—

- (a) a minimum in-ground length of 25 per cent of the total length of the sheet,
- (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.

Steel Panel Fencing

4. A fence constructed of new steel panels designed in accordance with AS. 1538-74 “SAA Cold-Formed Steel Structures Code” and AS. 1170 part 2 “SAA Wind Loading Code” and built to the manufacturer’s specifications.

Timber Fence

5. A timber fence shall be erected in accordance with the following—

- (a) end posts, corner posts and gate posts shall be 125mm x 125mm;
- (b) intermediate posts shall be 125mm x 75mm spaced at not more than 2700mm;
- (c) Posts are to be strutted with 100mm x 25mm x 400mm battens;
- (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
- (e) the portion of posts to be buried in the ground are to be treated with suitable borer or termite repellent;
- (f) post holes are to be backfilled with cement stabilised soil or concrete and thoroughly consolidated before attaching rails to posts;
- (g) two rails shall be used when fence cladding is 1.5 metres or less in height and three rails when it exceeds this height;
- (h) top and bottom rails shall be a minimum of 75mm x 50mm with a middle rail spanning two bays of fencing, bolted to each post and joints staggered joints where possible;
- (i) the fence may be clad with 75mm x 20mm sawn timber and doubled nailed to each rail, or any other material as approved by Council and in compliance with the Local Law.

Second Schedule**SPECIFICATIONS FOR A SUFFICIENT FENCE
WITHIN A SPECIAL RESIDENTIAL ZONE**

The following specifications and requirements constitute a “sufficient fence”, for the purposes of the Dividing Fences Act—

FENCE HEIGHTS

1. A dividing fence shall not be less than 1000mm nor exceed a height of 1400mm above the ground.

FENCE MATERIALS

2. (a) Posts: Are to consist of either standard steel star pickets, sawn jarrah or termite and fungicide treated timber, with appropriate steel or timber strainer assemblies.

(b) Wire: Ringlock, hinge joint or similar product having a rating of 6/90/30.

CONSTRUCTION STANDARDS AND MINIMUM SPECIFICATIONS

3. (a) Intermediate Posts:

- To be set a minimum of 500mm into the ground and to be spaced not more than 4000mm apart.
- Timber posts shall have a minimum diameter or width of 100mm.

(b) Strainer Assemblies:

- To be provided at corners, gateways and fence line angle changes.
- Timber strainer posts shall not be less than 150mm in diameter or width, with struts not less than 100mm diameter or width.
- Commercially manufactured steel strainer assemblies to be installed to manufacture’s specifications.
- Strainer posts are to be sunk into the ground a minimum of 900mm.

(c) Wire:

- All wire to be strained tightly.
- All ringlock, hinge joint or similar products are to be attached to line posts at three points with tie wire threaded through posts, or stapled.

Third Schedule
**SPECIFICATIONS FOR A SUFFICIENT FENCE IN AN
INDUSTRIAL LOT**

The following specifications and requirements constitute a "sufficient fence", for the purposes of the Dividing Fences Act:

FENCE HEIGHTS

1. The fence mesh shall be 1800mm in height, on top of which may be three strands of barbed wire extending the fence to a maximum height of 2100mm;

FENCE MATERIALS

2. A fence shall be constructed of 50mm link or chain mesh and supported by steel galvanised posts and braces.

CONSTRUCTION STANDARDS AND MINIMUM SPECIFICATIONS

3. (a) all posts are to be minimum length of 2700mm and capped;
- (b) all posts to set a minimum of 600mm into the ground and encased in concrete as per the following specifications;
- (c) Intermediate Posts—
- To have a nominal diameter of 38mm and minimum wall thickness of 3.6mm;
 - To be encased in concrete having a minimum diameter of 200mm;
 - To be spaced at 4000mm centres;
- (d) Corner Posts—
- To have a nominal diameter of 50mm and minimum wall thickness of 3.6mm;
 - To be encased in concrete having a minimum diameter of 300mm;
 - Shall have not less than 2 diagonal pipe braces of diameter 50mm and minimum wall thickness 3.6mm, on each alignment of the fence. Each brace shall be encased in concrete having a minimum diameter of 300mm;
- (e) Gate Posts—
- To have a nominal diameter of 65mm and a minimum wall thickness of 3.6mm;
 - To be encased in concrete having a minimum diameter of 300mm;
 - Shall be supported by 1 diagonal pipe brace of nominal diameter 50mm and wall thickness 3.6mm. The brace shall be encased in concrete having a minimum diameter of 300mm;
- (f) Cables—
- Cables shall be affixed to the top, centre and bottom of all posts and shall consist of two 3.15mm wires twisted together;
- (g) Gates & Fasteners—
- Gates shall be fitted with drop bolts and an appropriate locking device;
 - Gates of a width over 2400mm and up to 3000mm, and a height up to 2100mm shall have an outer galvanised iron pipe frame having a minimum internal diameter of 32mm and a minimum wall thickness of 2.6mm, with one horizontal and one vertical internal galvanised iron pipe member having a minimum internal diameter of 25mm and a minimum wall thickness of 2.6mm;
 - Gates of a width over 2500mm and up to 4000mm, and a height up to 2100mm shall have an outer galvanised iron pipe frame having a minimum internal diameter of 35mm and a minimum wall thickness of 2.6mm, with one horizontal and two vertical internal galvanised iron pipe members having a minimum internal diameter of 19mm and a wall thickness of 2.3mm, as well as a minimum diagonal bracing consisting of galvanised iron pipe with a minimum internal diameter of 19mm and a minimum wall thickness of 2.3mm installed in tension across the entire width of such gates;
 - Gates of a width over 4000mm shall be designed by a Structural Engineer.

Fourth Schedule
**SPECIFICATIONS FOR A SUFFICIENT FENCE
IN A RURAL AND RURAL RESIDENTIAL ZONE**

The following specifications and requirements constitute a "sufficient fence" for the purposes of the Dividing Fences Act:

FENCE HEIGHTS

1. A dividing fence shall not exceed a height of 1400mm.

FENCE MATERIALS

2. (a) Posts – are to consist of either standard steel star pickets, termite and fungicide treated timber, sawn or split jarrah.
- (b) Wire – to consist of the following **minimum** standards:
- Not less than 5 plain wires.

3. (a) Intermediate Posts—

- Timber posts shall have a minimum diameter or width of 100mm.
- To be set a minimum of 500mm in the ground.
- To be spaced not more than 7000mm apart.

(b) Strainer Assemblies—

- To be provided at corners, gateways and fence line angle changes and not greater than 200 metres apart.
- Timber strainer posts shall not be less than 300mm in diameter or width, with struts not less than 150mm diameter or width.
- Commercially manufactured steel strainer assemblies to be installed to manufacturer's specifications.
- Strainer posts are to be sunk into the ground a minimum of 1000mm.

(c) Wire—

- All wire to be high tensile steel galvanised wires of minimum diameter 2.5mm.
- All wires to be strained tightly.
- All ringlock, hinge joint or similar products are to be attached to posts at three points with the wire threaded through posts.

(d) Gates & Fasteners—

Vehicle entry gateways shall have a minimum opening of 3.6m. Gates shall be constructed of 25mm suitably braced tubular steel framework and infill material to minimum fencing standard. Gates shall be fastened with an appropriate locking device, which is not capable of being opened by stock, to Council satisfaction.

4. Electrified Fences—

- a) Electric hot wires on boundary fences are to be mounted inside fenceline.
- b) A person shall not electrify a wire fence pursuant to these local laws unless that fence is controlled by an electric fence control device manufactured in accordance with AS. 3129-1989.
- c) Fences shall be identified by suitable signs fastened to the fence at intervals not exceeding 200 metres in Rural zone and 100m in Rural Residential zone.

The Common Seal of the Shire of Donnybrook/Balingup was hereunto affixed in the presence of—

F. S. DRAKE-BROCKMAN, President.
J. R. ATTWOOD, Chief Executive Officer.

