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**LOCAL GOVERNMENT ACT 1995**

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**SHIRE OF CAPEL**

**LOCAL LAWS RELATING TO  
FENCING**



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**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF CAPEL

**LOCAL LAWS RELATING TO FENCING**

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Shire of Capel resolved to make the following local laws on the 13<sup>th</sup> of June 2001.

**PART 1—PRELIMINARY****1 Citation**

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

**2 Repeal**

The By-laws Relating to Fencing published in the Government Gazette of 26 February 1982, as amended by publication in the Government Gazette of 19 December 1986, are repealed.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” 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;

“Large Residential Lot” means a lot having a density code less than or equal to R5 in the gazetted town planning scheme;

“local government” means the Shire of Capel;

“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 15(1);

“Small Residential Lot” means a lot having a density code greater or equal to R10 in the town planning scheme 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 *Town Planning and Development Act 1928*.

## 5 Licence Fees and 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*.

## PART 2—SUFFICIENT FENCES

### 6 Sufficient Fences

Unless by agreement between the owners of adjoining properties, a person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.

(1) Subject to sub-clauses (3) and (4), a sufficient fence—

- (a) on a Small 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 Large 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 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 Third Schedule;
- (d) 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 Fourth Schedule.

(2) Where a fence is erected on or near the boundary between—

- (a) a Small Residential Lot or a Large 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 Small Residential Lot or a Large 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 Third Schedule;
- (c) a Small Residential Lot or a Large 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 Fourth Schedule;
- (d) a Small Residential Lot or a Large 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 First or Second Schedule respectfully;
- (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 Fourth Schedule;
- (f) a Special Rural/Rural Lot and a Large Residential Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule.

(3) 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 the Third Schedule.

(4) 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.

(5) The fencing specifications listed in Schedules 1, 2, 3 and 4, are intended to be used in assisting in determining a sufficient fence for the purposes of the Dividing Fences Act only.

Conditions specific to a locality such as soil types, topography and wind loadings, should be considered when constructing a fence.

### **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 Small Residential Lot within the district.

(2) The Building Surveyor may approve the erection of a fence of a height greater than 1200mm in the front setback area of a Small 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 3000mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.

(3) The provision of sub-clause (2) 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.

#### **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**

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.

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

(1) Notwithstanding clause 6, 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.

(3) Notwithstanding that these local laws specify a minimum standard for a sufficient fence for the purposes of the Dividing Fences Act, Council may adopt guidelines for alternative standards that it will approve. In setting these guidelines, Council shall have regard to acceptable materials and heights.

### **PART 4—FENCING MATERIALS**

#### **11 Fencing Materials**

(1) A person shall construct a fence on a Small 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 Small 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 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) 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 referred to in subclauses (2) or (3) 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.
- (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.

**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.

**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.

**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 \$100.



**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 or substantially in the form of 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 substantially in the form of Form 3 in Schedule 1 of the Local Government (Functions and General) Regulations 1996.

Clause 6(2)(a)

***First Schedule***

**SPECIFICATIONS FOR A SUFFICIENT FENCE  
ON A SMALL RESIDENTIAL LOT**

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

- A. A picket timber fence which satisfies the following specifications:
  - (a) corner posts to be 125mm x 125mm x 2400mm and intermediate posts to be 125mm x 75mm x 2400mm spaced at 2400mm centres;
  - (b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
  - (c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts;
  - (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
  - (e) rails to be 75mm x 50mm with each rail spanning two bays of fencing double railed or bolted to each post with joints staggered;
  - (f) the fence to be covered with 75mm x 20mm sawn pickets, 1800mm in height placed 75mm apart and affixed securely to each rail; and
  - (g) 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.
- B. A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting erected to manufacturer's specifications or which otherwise 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 (applicable to corrugated fibre reinforced pressed cement fencing only);
  - (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 (applicable to corrugated fibre reinforced pressed cement fencing only); and
  - (d) 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.
- C. A fence constructed of brick, stone or concrete, which satisfies the following specifications and AS3700 where applicable:
  - (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 and complies with AS3700:
  - (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 wall; and
  - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified;

***Second Schedule*****SPECIFICATIONS FOR A SUFFICIENT FENCE  
ON A LARGE RESIDENTIAL LOT**

A "sufficient fence" on a Large Residential 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;
 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
- (c) strainer posts shall be not less than 2250mm long and 50mm 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.
- (d) No boundary fence shall be constructed of the following materials—
  - (i) fibro cement;
  - (ii) metal sheeting;
  - (iii) wooden pickets.

***Third Schedule*****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.

***Fourth Schedule***  
**SPECIFICATIONS FOR A SUFFICIENT FENCE  
ON A RURAL LOT AND A SPECIAL RURAL LOT**

In the case of a non-electrified fence, a "sufficient fence" on a Rural Lot and a Special Rural Lot is a fence of posts and wire construction, the minimum specifications for the following purposes which are—

- A A fence to contain cattle and horses which satisfies the following specifications:
- (a) wire shall not be of a standard less than 2.5mm high tensile wire. 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;cut not less than 1.8m long x 100mm diameter at small end if round or 125mm x 60mm if split or sawn. Posts to be set minimum of 600mm in the ground and 1.2m above the ground spaced at 10m maximum centres; and
  - (c) strainer posts shall not be less than 2.25m long and 150mm diameter at the small end (tubular steel to be 90mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1.0m in the ground and set at all corners, gateways and fence line angles.
- B A mesh fence to contain sheep and goats which satisfies the following specifications:
- (a) wire shall be hinge joint or ringlock with two plain high tensile wires of not less than 2.5mm located above the mesh and connected to posts in all cases. The mesh wire shall be clipped to the lower of the two plain wires at 3m centres;
  - (b) posts shall be spaced at 6m maximum centres in accordance with the construction standards in A(b) above; and
  - (c) strainer posts shall be in accordance with the construction standards in A(c) above.
- C An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with A.

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Dated 13 June 2001.

The Common Seal of the Shire of Capel was affixed by authority of a resolution of the Council in the presence of—

M. T. SCOTT, President.  
R. G. BONE, Chief Executive Officer.

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