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LOCAL GOVERNMENT ACT 1995

**SHIRE OF
SERPENTINE-JARRAHDAL**

FENCES LOCAL LAW

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FENCES LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Shire of Serpentine Jarrahdale resolved to make the following local law on the 28th June, 2004. This Local Law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

1 Citation

This Local Law may be cited as the Shire of Serpentine-Jarrahdale Local Law—Fences.

2 Repeal

The Shire of Serpentine Jarrahdale Local Law—Fences published in the *Government Gazette* on 1 July 1997 is repealed.

3 Application of Local Law

This Local Law applies throughout the district.

4 Interpretation

In this Local Law unless the context otherwise requires—

“*Act*” means the *Local Government Act 1995*;

“*Australian Standard*” means a current Australian Standard published by the Standards Association of Australia;

“*Authorised Officer*” means an officer of the local government authorised by the Council to exercise powers and functions in this Local Law;

“*Building Line*” means a line which is representative of the forward most alignment that a building is situated, in relation to the front setback requirements;

“*Building Setback*” means the shortest horizontal distance between a boundary or other specified point and the position at which a building may be erected;

“*Cattle*” has the meaning given to it in the *Local Government (Miscellaneous Provisions) Act 1960*;

“*Commercial Zone*” means any portion of the district zoned commercial under a Town Planning Scheme;

“*Council*” means the Council of the Shire of Serpentine-Jarrahdale;

“*District*” means the district of the local government of the Shire of Serpentine-Jarrahdale pursuant to the *Local Government Act 1995*;

“*Dividing Fence*” means a fence that separates the lands of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary;

“*Fence*” includes any structure, including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate, but does not include a swimming pool safety enclosure;

“*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;
- (c) where there is any dispute as to the ground level for the purposes of calculating “*Height*” a determination of the Principal Building Surveyor of the Shire shall be conclusive.

“*Industrial Zone*” means any portion of the district classified within the Industry-General, Industry-Hazardous, Industry-Light, Industry-Noxious, Industry-Service, and Industry-Rural Zones in a town planning scheme;

“*Licence*” has the meaning given to it in Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*;

- “*Lot*” has the meaning given to it in the *Town Planning and Development Act 1928*;
- “*Miscellaneous Provisions Act*” means the *Local Government (Miscellaneous Provisions) Act 1960*;
- “*Principal Building Surveyor*” means the Principal Building Surveyor of the Shire of Serpentine-Jarrahdale;
- “*Residential Zone*” means any portion of the district classified within the Residential Zone, Special Residential Zone and land parcels of 2000 square metres or less in the Urban Development Zone in a Town Planning Scheme;
- “*Retaining Wall*” means any structure which prevents the movement of soil in order to allow ground levels of differing elevations to exist adjacent to one another;
- “*Rural Zone*” includes all land zoned Rural, Farmlet, Conservation and Agricultural Protection under a Town Planning Scheme;
- “*Setback*” means the horizontal distance between a wall at any point and the adjacent lot boundary measured at right angles (90°) to the wall;
- “*Shire*” means the local government of the Shire of Serpentine-Jarrahdale;
- “*Special Rural Zone*” means land classified within the Rural Living A, Rural Living B, Special Rural zones and land parcels in excess of 2000 square metres in the Urban Development Zone under a Town Planning Scheme;
- “*Swimming Pool Safety Enclosure*” means an enclosure that satisfies the requirements of Part VIII of the *Local Government (Miscellaneous Provisions) Act 1960*;
- “*Town Planning Scheme*” means a scheme in force within the district of the Shire of Serpentine-Jarrahdale pursuant to the *Town Planning and Development Act 1928*;
- “*Visually Permeable*” means that the vertical surface of a wall, gate or fence has continuous vertical gaps of at least 50mm width occupying not less than one third of its face in aggregate of the entire surface or where narrower than 50mm, occupy at least one half of the face in aggregate, as viewed directly from the street; or a surface offering equal or lesser obstruction to view;

Any other expression used in this Local Law and not defined herein shall have the meaning given to it in the *Local Government Act 1995* or the *Local Government (Miscellaneous Provisions) Act 1960* unless the context requires otherwise.

5 Fences in a Residential Zone

5.1 No person shall, unless they have first sought and obtained a licence from the Council, erect or commence to erect in a Residential Zone a dividing fence—

- (a) higher than 1.8 metres on or near a boundary behind the building line; or
- (b) higher than 1.0 metres forward of the building line.

5.2 Notwithstanding any other provision in this Local Law a fence may not be constructed of corrugated fibre reinforced compressed cement sheeting in the front setback.

5.3 Notwithstanding clause 5.1 Council may grant a licence to erect a fence exceeding 1.0 metres but not exceeding 1.8 metres forward of the building line subject to the following—

- (a) the fence shall be constructed of brick or masonry or some other material approved by Council; and
- (b) where a fence abuts a driveway or cross-over into a lot the fence across the front boundary shall be angled into that lot for a distance of not less than 1.5 metres along the frontage to a distance of not less than 1.5 metres from the frontage, in accordance with the diagram set out in the Fourth Schedule; and
- (c) any fence constructed within the primary street setback area is to be visually permeable 1.2m above natural ground level.

6 Fences in a Special Rural Zone

No person shall erect or commence to erect a fence in a Special Rural Zone—

- (a) without first having obtained a licence from Council; unless the fence is erected and maintained in accordance with the Third Schedule; and
- (b) otherwise than in accordance with the requirements in a town planning scheme.

7 Fences in a Rural Zone

No person shall erect or commence to erect a fence in a Rural Zone—

- (a) without first having obtained a licence from Council; unless the fence is erected and maintained in accordance with the Fifth Schedule; and
- (b) otherwise than in accordance with the requirements in a town planning scheme.

8 Fences in an Industrial Zone

No person shall, without first having obtained a licence erect or commence to erect a fence in an Industrial Zone; unless the fence is erected and maintained in accordance with the Second Schedule.

9 Fences in a Commercial Zone

No person shall, without first having obtained a licence erect or commence to erect a fence in a Commercial Zone unless, the fence is erected and maintained in accordance with the Second Schedule, and the fence is erected behind the building line on the property.

10 Sufficient Fence

The following shall, if constructed in accordance with this Local Law be a "sufficient fence" for the purposes of the *Dividing Fences Act 1961*—

- (a) In a Residential Zone a dividing fence constructed and maintained in accordance with the specification and requirements set out in the First Schedule.
- (b) In an Industrial or Commercial Zone a dividing fence constructed and maintained in accordance with the specification and requirements set out in the Second Schedule.
- (c) In a Special Rural Zone a dividing fence constructed and maintained in accordance with the specification and requirements set out in the Third Schedule.
- (d) In a Rural Zone a dividing fence constructed and maintained in accordance with the specification and requirements set out in the Fifth Schedule.

11 Application for Approval

11.1 No person shall erect or commence to erect a fence including a retaining wall that does not comply with the relevant schedule applicable to that zone on or near a lot boundary without having first submitted to Council an application for a licence pursuant to the provisions of *the Building Regulations 1989* accompanied by a plan and specifications and payment of the application fee specified by those Regulations.

11.2 Council may grant an application for a licence with or without conditions which may include—

- (a) where a retaining wall is approved, the construction of that retaining wall shall be completed prior to any other development commencing on the land;
- (b) if an applicant seeks approval for the use of barbed wire, that barbed wire shall not be installed in any fence below a height of 1.8 metres.

12 Fences Shall Not Impede Water Movement

No person shall erect or commence to erect a fence of impervious material in any location where it may or is likely to act as a barrier to or restrict in any way whatsoever the normal flow of stormwater, floodwater or a water course in on or over any land.

13 Fences Shall Not be Constructed of Brushwood

No person shall erect or commence to erect a fence of brushwood material due to the fire hazard of such material.

14 Maintenance of Fences

14.1 An owner or occupier of land on which a dividing fence is erected shall maintain the fence in good condition and in accordance with the relevant Schedule and so as to prevent it from falling into disrepair.

14.2 Where in the opinion of an authorised officer a fence is in a state of disrepair or is otherwise in breach of a provision of this Local Law the authorised officer may give notice in writing to the owner or occupier of the land upon which the fence is erected requiring the owner or occupier to modify, repair, paint or maintain the fence within the time specified in the Notice.

14.3 Where an owner or occupier of land who has been given notice under subsection (2) fails to comply with the requirements of the notice an authorised officer, subject to compliance with the relevant provisions of the Act, enter the land with or without contractors and assistants and carry out the works specified in the notice and recover the costs and expenses incurred by it in so doing from the owner or occupier of the land in a Court of competent jurisdiction.

14.4 An owner or occupier who fails to comply with the notice issued under subsection (2) commits an offence.

15 General Discretion of the Council

15.1 The Council may consent to the erection or retention of a fence which does not comply with one or more of the requirements of this Local Law.

15.2 In determining whether to grant its consent for the erection or retention of a fence Council may consider, in addition to any other matter that it is authorised to consider, whether the erection or retention of the fence might have an adverse effect on—

- (a) the safety, convenience or use of any land;
- (b) the safety or convenience of any person;
- (c) the orderly and proper planning of the locality; and
- (d) the amenity of the locality.

15.3 In exercising its discretion Council shall not approve a fence in the Rural Zone which is not visually permeable.

16 Electrified Fences

16.1 No person shall erect or maintain an electrified fence within a Residential Zone.

16.2 No person shall erect or operate an electrified fence unless the fence first complies with AS/NZS 3014:2003.

16.3 If Council forms the opinion that the presence or operation of an electrified fence is prejudicial to the safety or amenity of a locality Council may by notice in writing request the removal of an electrified fence. Any person who receives a notification shall remove the fence within the time specified in the notice. A person failing to remove a fence within the time specified commits an offence.

17 Object of this Local Law

The object and purpose of this Local Law is to ensure owners or occupiers of any land, vacant or otherwise within the district, erect, install and maintain boundary and internal fencing to a standard so as to achieve a specific purpose, maintain the aesthetic value and amenity of the community and to comply with specific standards as prescribed within the context of this Local Law and other standards as specified.

18 Notices

If there is on any land, vacant or otherwise within the district, a fence or fencing which does not comply or is in breach of this Local Law, an authorized person may issue and serve a notice signed by the Chief Executive Officer—

18.1 requiring the owner or occupier to—

- (a) renew, alter, repair, upgrade or maintain a fence or any portion of a fence as to comply with this Local Law or intent of the Local Law,
- (b) install or erect a fence or any portion of a fence,
- (c) remove a fence or any portion of a fence,
- (d) carry out any other works to achieve the object of the Local Law.

18.2 advising the owner or occupier that they have 28 days in which to lodge a notice of objection with the Chief Executive Officer of the Local Government.

18.3 advising the owner or occupier that the failure to comply with the notice may result in Court action proceeding without further notice.

18.4 advising the owner or occupier that failure to comply with a notice may result in the Local Government carrying out the work set out in the notice, the costs of which will be recovered from the owner or occupier of the Land.

19 Objection by Owner or Occupier

The owner or occupier of Land having been served with notice under this Local Law is deemed to be an affected person under the Act, and may within 28 days of being served with a notice, lodge a notice of objection, in writing, addressed to the Chief Executive Officer.

(Part 9 Division 1 of the Act)

20 Penalties—Breach for Failure to Comply with a Notice

An owner or occupier, having been served with a notice, who fails to comply with the terms of the notice within the prescribed time, commits an offence.

Penalty—

- (a) \$5,000; and
- (b) a daily penalty of \$500.00

21 Entry and Effecting the Works and Provisions of the Notice

Where an owner or occupier fails to comply with the terms of a notice, and refuses to give the Local Government written permission to enter onto the Land to carry out the work specified in the notice, the Local Government may, at the time of conviction for a breach of this Local Law make application to the Court for—

- (a) a Warrant to enter onto the Land to carry out the work specified in the notice; (Section 3.33 of the Act) and,
- (b) an order that the works specified by the Notice are undertaken and completed by the Local Authority and the costs to carry out the required works be prescribed as a debt due from the owner or occupier of the land.

Section 10(a)

First Schedule

SUFFICIENT FENCES IN A RESIDENTIAL ZONE**1 Sufficient Fence**

A The following is a “*sufficient fence*” in a Residential Zone for side and rear boundaries (excluding land within the Special Residential Zone and land coded R5).

Either a fence constructed of corrugated fibre reinforced pressed cement sheeting which satisfies the following specifications—

- (1) A minimum in-ground depth of 25% of the total length of the total depth of the sheet;
- (2) The total height and depth of the fence to consist of a single continuous fibre reinforced cement sheet;
- (3) All sheets to be lapped and capped with extruded “*snap-fit*” type capping;

or an equivalent steel fence.

B The following is a “*sufficient fence*” in the Special Residential Zone and on land coded R5.

Fencing on a lot boundary shall be constructed of post and rail or post and wire unless otherwise approved by the Council and shall notwithstanding the previous provision be in accordance with Council’s Town Planning Scheme.

2 Other Provisions

The erection or maintaining of barbed wire on fencing within a Residential Zone is prohibited.

Council may permit within a Residential Zone fences constructed of brick, masonry, stone, timber, metal sheeting, wrought iron, link mesh, post and rail, concrete subject to an application being made to Council for a Licence. Any such application shall be accompanied by specifications as determined by the Principal Building Surveyor. Such specifications should demonstrate that the fence will be of an acceptable quality and appearance and be capable of being properly maintained.

Section 10(b)

Second Schedule

SPECIFICATIONS FOR A SUFFICIENT FENCE IN AN INDUSTRIAL AND COMMERCIAL ZONE

The following is a "sufficient fence" in an Industrial and Commercial Zone—

- 1 A fence constructed of 50mm steel mesh.
- 2 The mesh is to be a height of 1800mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2100mm.
- 3 The fence is to be supported by steel galvanised pipe posts:—
 - (a) 2700mm in length;
 - (b) having a nominal bore of 40mm and an outside diameter of 48mm;
 - (c) spaced at 4000mm centres;
 - (d) sunk 600mm into the ground and encased in concrete having a diameter of 150mm; and
 - (e) terminal posts are to be braced in the line of the fence with diagonal pipe braces having nominal bore of 50mm and an outside diameter of 60mm.
- 4 There should be a centre and bottom high tensile galvanised steel wire 3.15 in diameter and double twisted.

Section 10(c)

Third Schedule

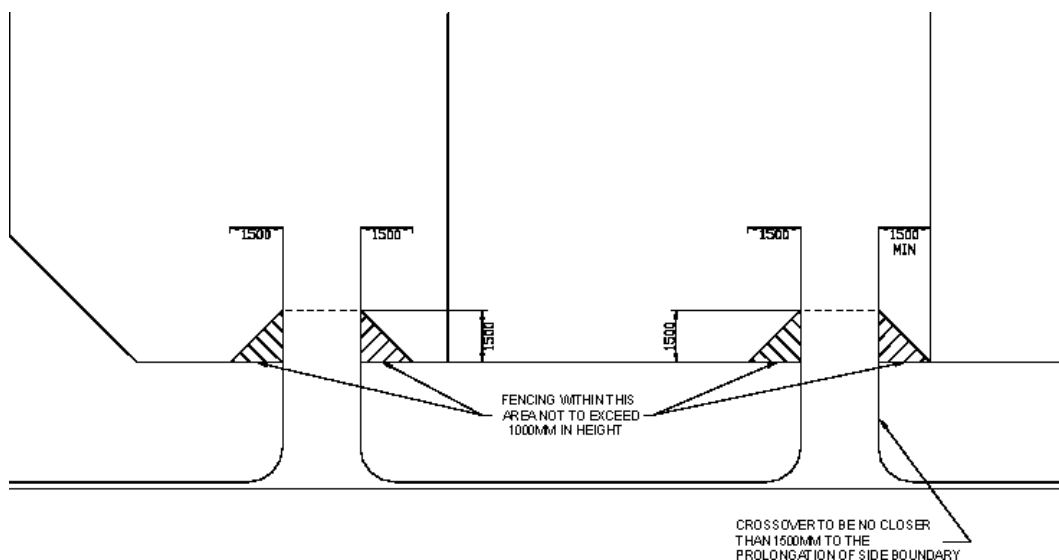
SPECIFICATIONS FOR A SUFFICIENT FENCE IN A SPECIAL RURAL ZONE

The following is a "sufficient fence" in a Special Rural Zone:—

- 1 A lot boundary fence shall be of post and rail or post and wire unless otherwise approved by the Council or as otherwise stated in Council's Town Planning Scheme.
- 2 A fence shall be erected and maintained so as to securely confine all cattle within the boundaries of the property.
- 3 Barbed wire is permitted on fencing within this Zone.

Section 5.3(b)

Fourth Schedule



*Fifth Schedule***SPECIFICATIONS FOR A SUFFICIENT FENCE IN A RURAL ZONE**

1 A fence shall be erected from suitable material to restrain cattle—

- (i) set not less than 450mm into the ground and not less than 1.2 metres out of the ground;
- (ii) each fencing post shall carry the equivalent of not less than five plain galvanised wires.

2 Subject to approval of the Shire, fences of timber, brick, stone, concrete, link mesh or other material may be erected.

3 A fence shall be erected and maintained so as to securely confine all cattle within the boundaries of the property.

Dated 28th June 2004.

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

D. L. NEEDHAM, Shire President.
D. E. PRICE, Chief Executive Officer.



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