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DIVIDING FENCES ACT 1961

LOCAL GOVERNMENT ACT 1995

TOWN OF BASSENDEAN

FENCING LOCAL LAW 2010

DIVIDING FENCES ACT 1961**LOCAL GOVERNMENT ACT 1995**

TOWN OF BASSENDEAN

FENCING LOCAL LAW 2010

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DIVIDING FENCES ACT 1961
LOCAL GOVERNMENT ACT 1995

TOWN OF BASSENDEAN

FENCING LOCAL LAW 2010

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 23rd November 2010 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 2010*.

1.2 Repeal

The *Town of Bassendean Local Law Relating to Fencing 2005* published in the *Government Gazette* of 26th April 2005 is repealed.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;

“**AS**” means an Australian Standard published by the Standards Association of Australia;

“**authorised officer**” means an officer of the local government who is authorised by the local government to carry out functions pursuant to this local law;

“**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;

“**Building Surveyor**” means the Building Surveyor of the local government who has delegated authority to act on this local law;

“**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 a local planning scheme; and

(b) is or will be the predominant use of the lot;

“**corner**” means a change in direction of a road, way or street whether or not it is caused by the intersection of two roads and with the angle created by the projection of the lot frontages not being greater than 135°;

“**Council**” means the Council of the local government;

“**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 is constructed in accordance with the local law;

- “**district**” means the district of the local government constituted pursuant to the *Local Government Act 1995*;
- “**dividing fence**” has the meaning given to it in and for the purposes of the Act;
- “**electric 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;
- “**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 2.4 and 6.1;
- “**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;
- “**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;
- “**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 and includes the term “sheeting”, but is not restricted to such materials;
- “**sufficient fence**” means a fence described in Part 3; and
- “**visually permeable**” means a fence, or a portion of a fence, that has continuous vertical or horizontal gaps of at least 75mm apart which, when measured in aggregate, constitute at least one third the total surface area of the fence, or where the gaps measure less than 75mm, the aggregate of the gap area width of the fence constitutes at least 50% of the total surface area of the fence.

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;
- (b) ensure that adequate standards of safety, structural sufficiency and amenity in relation to fencing are maintained throughout the district; and
- (c) allow some fences to be erected without the approval of the local government.

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 Fences on Residential Lots

(1) Notwithstanding the application of other provisions of this local law, a proposed fence that complies with the requirements stated in subclauses (a) to (f) inclusive and which is located on a residential lot, does not require the approval of Council, prior to its construction—

- (a) A fence shall not exceed a maximum height of 1.2m when located between a street frontage boundary and a point 1m behind the building line, or, a front setback area, whichever is the greater. A fence in any other location must not exceed a maximum height of 1.8m;
- (b) A fence located between a street frontage boundary and a point 1m behind the building line, or, a front setback area, whichever is the greater, is required to incorporate a visually permeable design such that any non-permeable part, excluding a pillar, post or column component, is limited to the bottom 1/3 of the vertical height;

- (c) Where a fence abuts a vehicle access point, whether on the subject lot or on an adjoining lot, a 1.5m visual truncation must be maintained as depicted in the diagram in the Fourth Schedule. Any fence placed within this part must—
 - (i) be visually permeable above a height not exceeding 600mm; and
 - (ii) not contain more than one pier or post, and that pier or post shall not exceed a width of 350mm;
 - (d) A fence shall not exceed 600mm in height when placed within 6m of the intersection of 2 streets;
 - (e) Where a fence is erected above a retaining wall and the retaining wall is 500mm or less in height, the fence shall not exceed the height prescribed in subclause 1(a); and
 - (f) Where a fence is erected above a retaining wall and the retaining wall exceeds 500mm in height, the combined height of the retaining wall and fence shall not exceed the height prescribed in subclause 1(a) plus an additional 500mm.
- (2) Where a proposed fence on a residential lot does not comply with the requirements stated in subclauses (1)(a)-(f), the proposed fence may only be constructed once a fence application, including an application form, plans and specifications has been made to Council and the approval of Council has been granted in respect of such application.

Note: A retaining wall may not be constructed without the owner first having obtained a Building Licence under Part 15 of the Local Government (Miscellaneous Provisions) Act 1960. Retaining walls exceeding 500mm in height may also require Development Approval under the Local Planning Scheme

2.2 Fences on Commercial or Industrial Lots

- (1) A fence on a commercial or industrial lot that complies with the requirements in subclauses (a) to (e) inclusive, notwithstanding the application of other relevant provisions of this local law, does not require the approval of Council prior to its construction—
- (a) A fence shall not be erected between a street frontage boundary and a point 1m behind the building line, or, within a front setback area, whichever is the greater, on a commercial lot;
 - (b) A fence shall not exceed a maximum height of 2.1m when located between a street frontage boundary and a point 1m behind the building line, or, a front setback area, whichever is the greater. A fence in any other location must not exceed a maximum height of 2.4m, measured from ground level;
 - (c) A fence shall be visually permeable above a height of 600mm, measured from ground level;
 - (d) A fence shall not exceed a height of 600mm when placed within 6m of the intersection of 2 streets unless it is visually permeable; and
 - (e) When there is a variation in ground levels at either side of a boundary where a fence is to be placed the height of the fence will be measured from the lower of the 2 levels unless the fence is visually permeable.
- (2) Where a proposed fence on a commercial or industrial lot does not comply with the requirements in subclauses (1)(a)-(e), the proposed fence may only be constructed once a fence application, including an application form, plans and specifications has been made to Council and the approval of Council has been granted in respect of such application.

2.3 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.

2.4 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.

2.5 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.

2.6 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.

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 1m behind the building line, or, a front setback area, whichever is the greater, between;

- (a) two or more residential lots not exceeding 2,000m² is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
- (b) a residential lot not exceeding 2,000m² and a residential lot 2,000m² or greater in area is a dividing fence or a boundary fence constructed and maintained in accordance with the requirements of the First Schedule; and
- (c) two or more residential lots of 2,000m² or greater in area is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule.

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 1m 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 the Third Schedule.

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 1m 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) the First Schedule where the residential lot does not exceed 2,000m² in area; or
- (b) the Second Schedule where the residential lot exceeds 2,000m² in area.

3.4 Sufficient Fence is Not Mandatory Except for the Purposes of the Act

A fence on a common boundary between 2 or more properties is not limited under this local law to a fence outlined in the First, Second and Third Schedules except for the purposes of the Act.

PART 4—MATERIALS AND CONSTRUCTION

4.1 Fencing Materials

- (1) A person shall not, without the prior approval of the Building Surveyor in writing, erect or commence to erect a fence constructed of a material other than timber, fibre-cement, brick, painted or coloured concrete, masonry, wrought iron, tubular steel, powder coated profiled metal sheeting, bound brushwood or, any other material specified in the First, Second or Third Schedule, but restricted to the property type that each Schedule relates to.
- (2) A person shall not use pre-used materials unless the prior written approval of the Building Surveyor has been given. Approval shall be conditional on the applicant painting or treating the pre-used materials, with or without further condition, as directed by the Building Surveyor.
- (3) A person shall not erect a fence constructed of sheet metal unless all protruding edges are adequately capped to the satisfaction of the Building Surveyor.

4.2 Fencing in Front Setback Areas

- (1) Fences in the front setback area shall be constructed with piers, columns, posts and other intermittent components as approved by the Building Surveyor, at a spacing no greater than 4m, to break up the continuous appearance of the fence. The intermittent component must be visible on the elevation facing away from the property on which the fence is erected and be of a sufficient size or contrasting colour to delineate it.
- (2) Fibre-cement sheeting and sheet metal shall not be used in an area located between a street frontage boundary and a point 1m behind the building line, or, a front setback area, whichever is the greater.

Note: Fences located within the 100-year floodway of the Swan River are subject to the approval of the Department of Water, Swan River Trust, and/or Western Australian Planning Commission, which may impose further conditions to any approval it may grant.

PART 5—SECURITY FENCING**5.1 Electric Fences**

No person shall erect an electric fence in the district unless—

- (a) it is on an industrial or commercial lot;
- (b) in the case of a commercial lot is not erected in an area located between a street frontage boundary and a point 1m behind the building line, or, a front setback area, whichever is the greater;
- (c) the prior written approval of the local government has been obtained;
- (d) any conditions imposed by the approval granted pursuant to subclause (c) above have been complied with;
- (e) the fence is constructed and maintained in accordance with *AS/NZS 3016: 1994* or such other standard; and
- (f) no power is supplied to the fence during the hours of business, if any, on the lot where erected.

5.2 Razor Wire Fences

No person shall erect a fence wholly or partly constructed of razor wire in the district unless—

- (a) it is on an industrial or commercial lot;
- (b) in the case of a commercial lot it is not erected in an area located between a street frontage boundary and a point 1m behind the building line, or, a front setback area, whichever is the greater;
- (c) the prior written approval of the local government has been obtained;
- (d) any conditions imposed by the approval granted pursuant to subclause (c) above have been complied with;
- (e) it is not erected within 3m of any boundary of the lot; and
- (f) any razor wire used in the construction of the fence is greater than 2,000mm but less than 2,400mm above ground level.

5.3 Barbed Wire Fences

No person shall erect a fence wholly or partly constructed of barbed wire in the district unless—

- (a) it is on an industrial or commercial lot;
- (b) in the case of a commercial lot it is not erected in an area located between a street frontage boundary and a point 1m behind the building line, or, a front setback area, whichever is the greater;
- (c) the prior written approval of the local government has been obtained;
- (d) any conditions imposed by the approval granted pursuant to subclause (c) above have been complied with;
- (e) any barbed wire used in the construction of the fence is greater than 2,000mm but less than 2,400mm above ground level; and
- (f) the posts carrying the barbed wire if angled towards the outside of the lot bounded by the fence are set back from the lot boundary a sufficient distance to ensure that no part of the fence encroaches on adjoining land.

5.4 Maintenance

A fence referred to in clauses 5.1-5.3 above shall be maintained in good condition in a manner that complies with the provisions of clause 5.1, 5.2 or 5.3 as the case may be and with any conditions of approval.

5.5 General Compliance

A fence referred to in clauses 5.1-5.3 above shall comply with all other relevant provisions in this local law.

5.6 Transfer of an Approval

An approval given under this local law shall continue in force and effect until—

- (a) the fence is removed;
- (b) any approval is revoked by the local government; or
- (c) the owner surrenders the approval.

5.7 Revocation

Subject to Division 1 Part 9 of the *Local Government Act 1995*, the local government may revoke an approval granted under this Part if—

- (a) the fence no longer satisfies the requirements specified in clauses 5.1, 5.2 or 5.3 as the case may be; or
- (b) there is a breach of any condition upon which the approval has been granted.

PART 6—NOTICES OF BREACH

6.1 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 "Notice of Breach".

(2) A notice of breach shall—

- (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 7—OBJECTIONS AND REVIEW

7.1 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 8—OFFENCES AND PENALTIES

8.1 Offences and Penalties

(1) An owner who fails to comply with a notice of breach commits an offence and is liable upon conviction to a maximum penalty of \$5,000 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 \$5,000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

8.2 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**.

8.3 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*.

First Schedule

Dividing Fences Act 1961

Local Government Act 1995

TOWN OF BASSENDEAN FENCING LOCAL LAW 2010

RESIDENTIAL A—LOTS LESS THAN 2,000m² IN AREA

For the purposes of the Act, a sufficient fence on residential lots is a corrugated cement-fibre fence erected as follows—

- (a) an above ground height of 1.8m, except where limited by retaining as outlined in clause 2.1, behind the front setback area;
- (b) a minimum in-ground length of 25% of the total length of the sheet or 600mm, which ever is greater;

- (c) the total height plus depth of the fence shall consist of a single corrugated cement-fibre sheet; and
- (d) corrugated cement-fibre sheets are to be lapped and capped with extruded snap-fit type capping in accordance with the manufacturers specifications.

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

Second Schedule

Dividing Fences Act 1961

Local Government Act 1995

TOWN OF BASSENDEAN FENCING LOCAL LAW 2010

RESIDENTIAL B—LOTS EQUAL TO OR GREATER THAN 2,000m² IN AREA

For the purposes of the Act, a sufficient fence on residential lots shall accord with the following specifications—

- (a) The fence shall be constructed of sawn, split or round wooden posts set not less than 600mm in the ground and spaced not more than 3,600mm apart with strainer posts set 1,000mm in the ground and suitably and securely strutted at all corners, gateways and fence-line angles. Wire shall be wrapped around the strainer and strained tight. Posts are to be threaded with not less than 5 plain galvanised wires through evenly spaced 12mm diameter holes;
- (b) Star pickets or concrete posts may be used instead of wooden posts. Installation shall be the same as for wooden posts;
- (c) The height of the fence shall be 1.2m above finished ground level, except where limited by retaining as outlined in clause 2.1;
- (d) The materials used must accord with the following specifications—
 - (i) Wire shall be steel galvanised of not less than 2.5mm diameter;
 - (ii) Posts if of jam, white gum, jarrah or other indigenous timber, shall be cut not less than 1,800mm long by 100mm diameter at the small end if round or 125mm x 50mm if split or sawn; and
 - (iii) Strainer posts not to be less than 2,250mm long and 150mm diameter at the small end and shall be cut from indigenous timbers unless otherwise approved by the Building Surveyor.

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

Third Schedule

Dividing Fences Act 1961

Local Government Act 1995

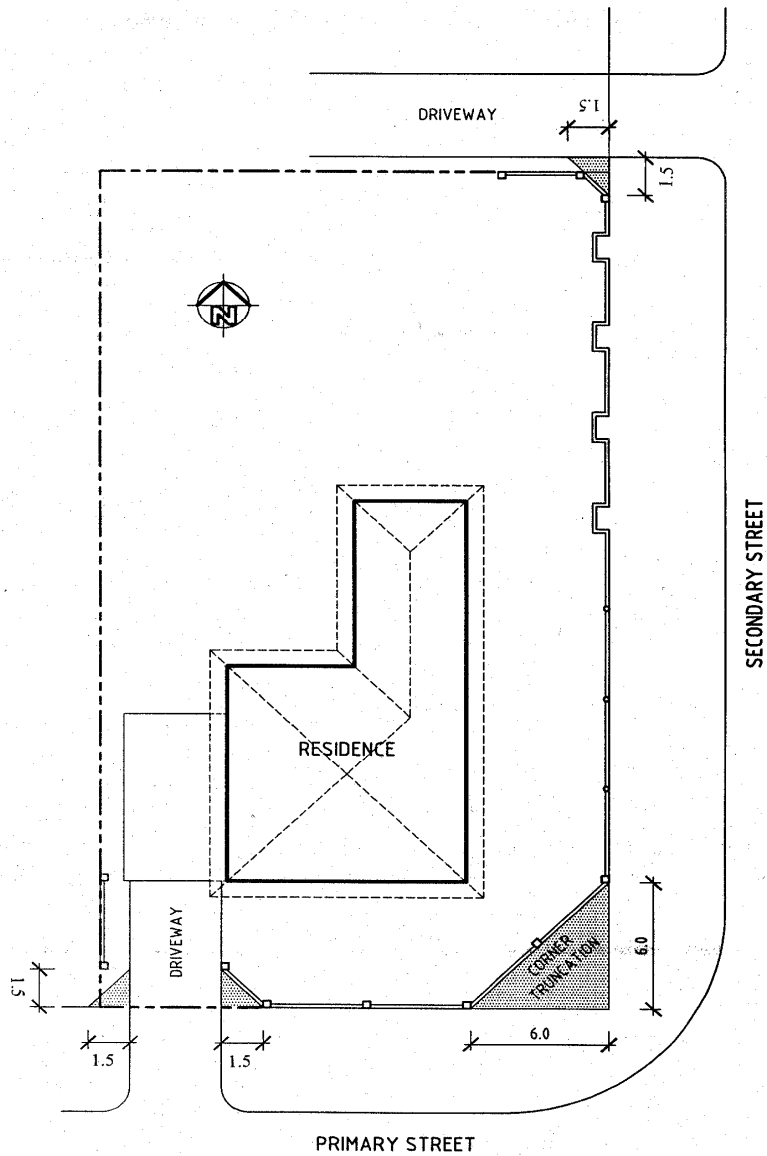
TOWN OF BASSENDEAN FENCING LOCAL LAW 2010

INDUSTRIAL AND COMMERCIAL

For the purposes of the Act, a sufficient fence on industrial or commercial lots shall accord with the following specifications—

- (a) A fence consisting of rail-less link mesh to a height of 1.8m above finished ground level supported by galvanised steel posts and bracing stays encased in concrete footings. Specification of materials and construction in accordance with *AS/NZS 1725-75* or such other standard as amended;
 - (b) Link mesh shall be poly vinyl chloride coated 2.5mm wire, formed into a uniform 50mm mesh. The link shall be strained and neatly secured and laced to supporting members in accordance with *AS/NZS 1725-75* or such other standard as amended; and
 - (c) Vehicle entry gates shall be covered with link mesh to match the fence and strained and neatly laced to the frame. The gates shall be constructed and fitted to gate posts in accordance with *AS/NZS 1725-75*, or such other standard as amended, and restrained from opening by 16mm galvanised drop bolts in keepers set in concrete.
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Fourth Schedule
Dividing Fences Act 1961
Local Government Act 1995
TOWN OF BASSENDEAN FENCING LOCAL LAW 2010



Dated 24 December 2010.

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. M. COSTARELLA, Acting Chief Executive Officer.