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LOCAL GOVERNMENT ACT 1995

SHIRE OF ESPERANCE

FENCING LOCAL LAW 2018

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LOCAL GOVERNMENT ACT 1995

SHIRE OF ESPERANCE

FENCING LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the Council of the Shire of Esperance resolved on 26 June 2018 to make the Shire of Esperance Fencing Local Law 2018.

PART 1—PRELIMINARY**1.1 Citation**

This local law may be cited as the Shire of Esperance Fencing Local Law 2018.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Repeal

(1) The following local laws are repealed—

- (a) the *Shire of Esperance Local Laws Relating to Fencing 2002* published in the *Government Gazette* No. 78 on 30 April 2002; and
- (b) the *Shire of Esperance Fencing Amendment Local Law 2009* published in the *Government Gazette* No. 177 on 2 October 2009.
- (c) the *Shire of Esperance Fencing Amendment Local Law 2011* published in the *Government Gazette* No. 90 on 3 June 2011.

(2) Where a policy was made or adopted by the Local Government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.

1.4 Application

This local law applies throughout the district.

1.5 Fees and Charges

All fees and charges applicable under this local law shall be as determined by the Local Government from time to time in accordance with s.6.16 to 6.19 of the Act.

1.6 Definitions

In this local law, unless the context requires otherwise—

Act means the *Local Government Act 1995*;

AS or AS/NZS means an Australian Standard or an Australian/New Zealand Standard published by Standards Australia, as amended from time to time. These are available for viewing free of charge at the Shire of Esperance Administration Office;

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 Local Planning Scheme; and
- (b) is or will be the predominant use of the lot;

dangerous in relation to any fence means—

- (a) an electric fence other than a fence erected and maintained in accordance with this local law;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, friable asbestos, 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 *Dividing Fences Act 1961*;
- electric fence** means a barrier which included one or more electric conductors, insulated from earth, to which electric pulses are applied by an energizer;
- fence** means any structure used or functioning as a barrier, irrespective of where it is located and includes any gate;
- 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 the fence is erected on a retaining wall approved by the Local Government, from the top of the retaining wall immediately below that point.
- Industrial Lot** means a lot where an industrial use—
- (a) is or may be permitted under the Local Planning Scheme; and
 - (b) is or will be the predominant use of the lot.
- Local Government** means the Shire of Esperance;
- Local Planning Scheme** means a Local Planning Scheme of the Local Government made under the *Planning and Development Act 2005*;
- 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 clause 5.1;
- primary street setback area** means the area between the front boundary line of a property and the primary street minimum setback prescribed under Table 1 of the Residential Design Codes;
- Residential Design Codes** means *State Planning Policy 3.1 Residential Design Codes* as prepared by the Western Australian Planning Commission and as amended from time to time
- Residential Lot** means a lot where a residential use—
- (a) is or may be permitted under the 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;
- Rural Lot** means a lot where a rural use—
- (a) is or may be permitted under the Local 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 Local Planning Scheme; and
 - (b) is or will be the predominant use of the lot;
- Rural Smallholdings Lot** means a lot where a rural smallholdings use—
- (a) is or may be permitted under the Local Planning Scheme; and
 - (b) is or will be the predominant use of the lot;
- Schedule** means a schedule of this local law;
- sufficient fence** means a fence described in clause 2.1.

PART 2—SUFFICIENT FENCES

2.1 Sufficient Fences

- (1) Unless by written consent between the owners of adjoining properties and the Shire a person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Subject to subclauses (3) and (4), a sufficient fence on a—
 - (a) Residential Lot is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1;
 - (b) Commercial Lot and an Industrial Lot is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 2;
 - (c) Rural Lot, a Rural Residential Lot, or a Rural Smallholdings Lot is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.
- (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 Schedule 1;
 - (b) Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1;

- (c) Residential Lot, and a Rural Lot or Rural Smallholdings Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 3;
 - (d) Residential Lot and a Rural Residential Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1; and
 - (e) Rural Residential Lot and a Rural Lot or a Rural Smallholdings Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.
- (4) Unless the Local Government 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 Schedule 2.
- (5) Notwithstanding any other provisions in this local law, a fence constructed of stone, brick or concrete shall be a sufficient fence only if it is designed by a structural engineer in accordance with the *Building Act 2011*.

PART 3—GENERAL

3.1 Maintenance of Fences

An owner of a lot on which a fence is erected shall maintain the fence in good condition to prevent it from becoming dangerous, dilapidated, or unsightly.

3.2 General Discretion of the Local Government

- (1) Notwithstanding any other provision in this local law, the Local Government may consent to the erection or repair of a fence which does not comply with the requirements of this local law.
- (2) In determining whether to grant its consent to the erection or repair of any fence, the Local Government may 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

4.1 Fencing Materials

- (1) A person shall only construct a fence on a Residential Lot, a Commercial Lot, an Industrial Lot, a Rural Lot, a Rural Smallholdings Lot, or a Rural Residential Lot in accordance with clause 2.1.
- (2) An application to the Local Government is required for written approval for the use of pre-used materials.

4.2 Barbed Wire and Broken Glass Fences

- (1) An owner or occupier of a 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 Local Government has been obtained.
- (2) 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.
- (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—
- (a) the wire or materials are carried on posts at an angle of 45 degrees; and
 - (b) the bottom row of wire or other materials is set back 150mm from the face of the fence; and
 - (c) 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 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.
- (6) This section does not apply to a fence constructed wholly or partly of razor wire.

4.3 Electric Fences

- (1) On a Rural Residential Lot, a Rural Lot, or a Rural Smallholdings Lot, electric fencing shall comply with AS/NZS 3014:2003 Electrical installations—Electric fences, as amended from time to time.
- (2) On an Industrial Lot, an electric fence shall—
- (a) comply with AS/NZS 3016:2002 Electrical installations—Electric security fences, as amended from time to time;
 - (b) comply with any requirements of the relevant power authority;
 - (c) be capable of being rendered inoperable during the hours of business operations, if any, on the lot where it is erected.

PART 5—NOTICES OF BREACH

5.1 Notices 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 of this local law which has 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.
- (3) Should an owner 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 of the lot, as the case may be, in a court of competent jurisdiction.
- (4) The provisions of this clause are subject to s3.25 and clause 12 of Schedule 3.1 of the Act and entry onto land will be in accordance with Part 3 Division 3 Subdivision 3 of the Act.

PART 6—OFFENCES

6.1 Offences and Penalties

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that a person is prohibited from doing, commits an offence.
- (2) A person who fails to comply with or who contravenes any provision of this local law commits an offence and is liable to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

6.2 Modified Penalties

- (1) An offence against any provision of this local law is a prescribed offence for the purposes of s.9.16 (1) of the Act.
- (2) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$200.

6.3 Form of Notices

For the purposes of this local law—

- (1) The form of the infringement notice referred to in s.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*.
- (2) The form of the notice referred to in s.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*.

PART 7—REVIEW OF DECISIONS

7.1 Review of Decisions

When the Local Government makes a decision on whether to grant a consent or approval under this local law, the provisions of Part 9 Division 1 of the *Local Government Act 1995*, and Regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.

Schedule 1

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

(Clause 2.1)

Each of the following is a **sufficient fence** on a Residential Lot—

- (1) A timber fence which satisfies the following specifications—
 - (a) a height of 1800mm except where located within the primary street setback area;
 - (b) construction to be in accordance with the manufacturers specifications or best practice construction techniques;
 - (c) timber panelling to provide a solid cover to provide a solid screen except where the fence is located within the primary street setback area; and
 - (d) susceptible timber is to be treated for protection from termite attack in accordance with the current version of AS 3660.1: Termite management—Part 1: New building work, as amended from time to time.
- (2) A fence constructed of corrugated fibre reinforced pressed cement which satisfies the following specifications—
 - (a) a height of 1800mm except where located within the primary street setback area;
 - (b) construction to be in accordance with the manufacturers specifications or best practice construction techniques.

- (3) A fence constructed of stone, brick or concrete which satisfies the following specifications—
 - (a) in accordance with the *Building Act 2011*;
 - (b) shall be designed by a qualified structural engineer; and
 - (c) a height of 1800mm except within the primary street setback area.
- (4) A fence constructed of metal panel (eg Colorbond) or plastic panel (eg Duralok) fencing systems which satisfies the following specifications—
 - (a) a height of 1800mm, except where located within the primary street setback area; and
 - (b) construction to be in accordance with the manufacturers specifications.
- (5) A composite of the above fences such as timber posts with solid sheet metal infill and height as specified above.
- (6) A fence within a primary street setback area shall not exceed 1200mm in height without the written approval of the Local Government.

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL
LOT AND AN INDUSTRIAL LOT

(Clause 2.1)

Each of the following is a **sufficient fence** on a Commercial Lot and an Industrial Lot—

- (1) A fence constructed of galvanised or plastic 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 depth;
 - (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3500mm centres and with footings of a 225mm diameter x 600mm depth;
 - (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 diameter x 600mm depth;
 - (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 4.2 of this local law; 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 3600mm and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping. Gates shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework and shall be fixed with a drop bolt and locking attachment.
- (2) A fence of fibre reinforced cement sheet or metal sheeting constructed to the specifications referred to in Schedule 1.
- (3) A fence constructed of metal 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.
- (4) Fences of timber, stone, brick or concrete shall be constructed to the specifications referred to in Schedule 1.

Schedule 3

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT, A RURAL
RESIDENTIAL LOT, AND A RURAL SMALL HOLDINGS LOT

(Clause 2.1)

(1) In the case of a non-electric fence, a **sufficient fence** on a Rural Lot, a Rural Residential Lot, and a Rural Smallholdings Lot is a fence of posts and wire construction.

A fence which satisfies the following specifications shall be—

- (a) high tensile wire not less than 2.5mm with a minimum of five wires 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 of timber or other suitable material including—
 - timber impregnated with a termite and fungicidal preservative; or
 - star pickets; or
 - concrete;

- (c) posts 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
 - (d) strainer posts not less than 2250mm long and 50mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from timber or other suitable material. These shall be placed a minimum of 1000mm in the ground.
- (2) An electric fence having four wires only is a sufficient fence if constructed generally in accordance with clause 4.3.
- (3) A person shall not erect a fence exceeding 1500mm in height without the written consent of the Local Government.

Dated the 27th day of June, 2018.

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

Cr. V. BROWN, Shire President.

Mr. W. M. SCOTT, Chief Executive Officer.
