SHIRE OF RAVENSTHORPE

FENCING LOCAL LAW 2015

LOCAL GOVERNMENT ACT 1995

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LOCAL GOVERNMENT ACT 1995

SHIRE OF RAVENSTHORPE

FENCING LOCAL LAW 2015

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the *Shire of Ravensthorpe* resolved to make the following local law on the sixteenth day of April 2015.

PART 1 - PRELIMINARY

1. Citation

This Local Law may be cited as the Shire of Ravensthorpe Fencing Local Law 2015.

2. Application of Local Law

This Local Law applies throughout the district.

3. Interpretation

In this Local Law, unless the context requires otherwise:

Act means the *Dividing Fences Act 1961;*

AS/NZS means an Australian/New Zealand Standard published by the Standards Australia, as amended from time to time; available from the Shire of Ravensthorpe local government offices;

boundary fence has the meaning given by 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 this Local Law has been issued and is current;
(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, 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 by 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;

local government means the Shire of Ravensthorpe;

lot has the meaning given to it in the *Planning and Development Act 2005*;

"***notice of breach***" means a notice referred to in clause 15(1);

"***Residential Lot***" means a lot where a residential use -
(a) is or may be permitted under the town planning scheme; and
(b) is or will be the predominant use of the lot;

retaining wall means any structure which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

Rural Residential Lot means a lot which is zoned 'Rural Conservation' or 'Rural Small Holdings' or used for Rural Residential purposes in the town planning scheme.

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 this Local Law;

Secondary setback area means the land between a building situated on a lot and a secondary thoroughfare (as defined in the Residential Design Codes);

setback area means the land between a lot boundary line and a building situated on the lot, adjacent to any thoroughfare upon which that lot abuts;

sufficient fence means a fence described in clause 5; and

town planning scheme means a local planning scheme of the local government made under the *Planning and Development Act 2005*.

4. Licence Fees & Charges

All licence fees and charges applicable under this Local Law 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

5. Sufficient Fences

~~(1) 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) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.

(2) Subject to sub-clauses (3) a sufficient fence:
- (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the First Schedule.
- (b) on a 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 Second Schedule;
- (c) on a Rural Lot or Rural Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule;

(3) Where a fence is erected on or near the boundary between:
- (a) a Residential Lot and an Industrial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
- (b) a Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule;
- (c) a Residential Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
- (d) a 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 the First Schedule; and
- (e) a Rural 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 Third Schedule.

PART 3 - GENERAL

6. Fences Within Front and Secondary 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 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 Residential Lot only if the fence on each side of the driveway into the Lot across the front boundary is to be angled into the Lot for a distance of not less than 1500mm along the frontage to a distance of not less than 1500mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.

(3) The provision of subclause (2) shall not apply to a fence of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.

(4) The provision of subclause (2) shall apply to a secondary setback area where a driveway in the secondary setback area is used as the primary driveway access.

7. 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.

8. 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.

9. General Discretion of the Local Government

(1) Notwithstanding clause 5 and clause 6, the local government may give its written 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, in addition to any other matter that it is authorized to consider, whether the erection or retention of the fence would have an adverse effect on:
   (a) the safe or convenient use of any land; or
   (b) the safety or convenience of any person.

PART 4 - FENCING MATERIALS

10. Fencing Materials

(1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only brick, stone, concrete, wrought iron, tubular steel framed, link mesh, timber, plastic coated or galvanised link mesh, corrugated fibre reinforced cement sheeting, colour bonded metal or other 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.

11. 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 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 or similar hazardous material.

(6) An owner or occupier of a Rural Lot or Rural Residential 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

12. 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 in accordance with this clause; or
   (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under subclause (4).

(2) An electrified fence must not be present on a property unless it complies with AS/NZS 3016:2002.

(3) 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; and
   (b) 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.

(4) 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.

(5) An application for a licence referred to in subclauses (3) or (4) 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.

(6) An application for a licence referred to in subclauses (3) or (4) 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.

(7) A person applying for a licence under this clause must submit the application in the form determined by the local government from time to time and provide any additional information as reasonably requested by the local government.

(8) Notwithstanding clause 16(2), a failure to comply with subclause (7) will not constitute an offence under this local law.

(9) A local government may reject any application which fails to comply with subclause (7).

(10) Where the local government approves an application for a licence under this clause, it shall issue a licence to the applicant in the form determined by the local government from time to time.

13. Transfer of a Licence

A licence referred to in clause 12 shall transfer with the land to any new occupier or owner of the lot except where the licence has been cancelled under clause 14.

14. Cancellation of a Licence

Subject to Part 9 Division 1 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 12(2) or 12(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

15. 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 or occupier 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 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, only if the fence abuts a public thoroughfare, public place or property of the local government, and may recover the expenses of so doing from the owner of the lot, in a court of competent jurisdiction.

(4) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3 of the *Local Government Act 1995.*

PART 7 - OFFENCES

16. 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 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.

17. 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 these Local Laws is $125.

18. Form of Notices

For the purposes of this Local Law the form of the infringement notice referred to in section 9.17 of the *Local Government Act 1995* is to be in the form of Form 2 of Schedule 1 of the Local Government (Functions and General) Regulations 1996.

PART 8 - OBJECTION AND APPEAL

19. Objection and Appeal

~~Where the local government exercises a discretion pursuant to this local law, an affected person has a right of objection and appeal under Part 9 of the *Local Government Act 1995*.~~

When the local government makes a decision under clause 3.2, 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 5(2)(a)]

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

1. Any type of professionally manufactured timber fence, erected in accordance with the manufacturer’s specifications, 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 6;

2. Any corrugated fibre reinforced pressed cement sheet fence, erected in accordance with the manufacturer’s specifications, 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 6;

3. Any type of masonry or brick fence that is constructed in accordance with relevant Australian Standards, finished plumb, true and level and appropriately jointed, cleaned and of good general appearance, 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 6;

4. A steel sheet colourbond fence, erected in accordance with the manufacturer’s specifications, 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 6;

5. Dense brushwood erected in accordance with the manufacturer’s specifications, 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 6.

Schedule 2 - Specifications for a Sufficient Fence on an Industrial Lot [Clause 5(2)(b)]

Each of the following is a “sufficient fence” on a Commercial Lot and an Industrial Lot:

1. A fence constructed of PVC coated -
   (a) rail-less link;
   (b) chain; or
   (c) steel mesh;
2. the rail-less link, chain or mesh is to be to a height of 1800mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm;
3. the fence is to be supported by steel galvanised pipe posts each -
   (a) 2700mm in length;
   (b) having a nominal bore of 40mm and an outside diameter of 48mm;
   (c) spaced at 4000mm centres; and
   (d) sunk 600mm into the ground and encased in concrete having a minimum diameter of 150mm;

   the centre and bottom steel cable wire is to be 3.15mm in diameter and double twisted;
4. terminal posts are to be braced in the line of the fence with diagonal pipe braces having a nominal bore of 50mm and an outside diameter of 60mm.

Schedule 3 - Specifications for a Sufficient Fence on a Rural Lot and Rural Residential Lot [Clause 5(2)(c)]

1. In the case of a non-electrified fence, a sufficient fence on a Rural Lot and a Rural 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 -

      (i) timber impregnated with a termite and fungicidal preservative;

      (ii) standard iron star pickets; or

      (iii) 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.

2. An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with (1).

Dated this sixteenth day of April 2015.

The Common Seal of the)
Shire of Ravensthorpe was)
affixed in the presence of:)

.....
PRESIDENT

.....
CHIEF EXECUTIVE OFFICER