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LOCAL GOVERNMENT ACT 1995

SHIRE OF LAVERTON

FENCING LOCAL LAW 2013

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LOCAL GOVERNMENT ACT 1995

SHIRE OF LAVERTON

FENCING LOCAL LAW 2013

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Laverton resolved on 21 November 2013 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Laverton Fencing Local Law 2013*.

1.2 Commencement

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

1.3 Application

This local law applies within the Laverton townsite.

1.4 Interpretation

In this local law unless the context otherwise requires—

Act means the *Dividing Fences Act 1961*;

AS/NZS means an Australian/New Zealand Standard published by the Standards 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 predominate 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 5 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;

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;

local government means the Shire of Laverton;

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 6.1;

Residential Lot means a lot where 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;

Schedule means a Schedule to this local law;

setback area has the meaning given to it for the purposes of the town planning scheme;

sufficient fence means a fence described in clause 2.1; and

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

1.5 Licence Fees and 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

2.1 Sufficient Fences

(1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence unless all owners of lands which adjoins the relevant boundary agree to erect a fence which though different does not fail to comply with the requirements of a sufficient fence.

(2) Subject to subclauses (3) and (4), 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 Schedule 1; or
- (b) on a Commercial Lot and on an Industrial Lot is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Schedule 2.

(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, completed and maintained in accordance with the specifications and requirements of the Schedule 1; or
- (b) a Residential Lot and an Industrial Lot, a sufficient fence is a dividing fence constructed, completed and maintained in accordance with the specifications and requirement of the Schedule 2.

(4) 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 specification and requirements of the Schedule 2.

(5) Notwithstanding any other provisions in this local law, a fence is 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.

PART 3—GENERAL

3.1 Fences Within Front Setback Areas

(1) A person shall not, without written consent of the Building Surveyor, erect a free standing fence greater than 900mm in height, within the front set-back area of a Residential Lot.

(2) The Building Surveyor may approve the erection of a fence 900mm but not exceeding 1200mm in the front setback area of a Residential Lot.

3.2 Maintenance of Fences

(1) An owner and occupier 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 or unsightly.

(2) A person shall not fill or excavate behind a fence so as to undermine the structural integrity of the fence.

3.3 General Discretion of the Local Government

Notwithstanding clause 2.1 the local government may consent to the erection or repair of any fence, the local government may consider, in addition to any other matter that 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

4.1 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, pre-painted steel sheeting 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.

4.2 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 material with spiked or jagged projections unless the wire or materials are carried on a post 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 the 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 any broken glass on the lot as part of any internal or external fence wall.

PART 5—ELECTRIFIED AND RAZOR WIRE FENCES

5.1 Requirements for a Licence

(1) An owner or occupier of a lot, shall not—

- (a) have and use an electrified fence on that lot without first obtaining a licence under this clause; or
- (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under this clause.

(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: 2002 as amended from time to time; 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; and
- (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 under this clause must—

- (a) be in the form determined by the local government—
- (b) be accompanied by any fee imposed by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*; and
- (c) include—
 - (i) a written consent signed by the owner of the land on which the fence is located or proposed to be located—unless the applicant is the owner of that land; and
 - (ii) any further information which may be required by the local government.

(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 conditions as it thinks fit; or
- (c) refused by the local government.

(6) 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.

5.2 Transfer of a Licence

A licence issued under clause 5.1 will transfer with the land to any new occupier or owner of the lot, except where the licence has been cancelled under clause 5.3.

5.3 Cancellation of a Licence

Subject to Division 1 Part 9 of the 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 5.1(2) or 5.1(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

6.1 Notices of Breach

(1) Where a breach of any provision of this local law has occurred in relation to a fence on that 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 the 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 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

7.1 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 \$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.

7.2 Modified Penalties

(1) An offence against any provision in this local law is a prescribed offence for the purpose 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 \$200.

7.3 Form of Notices

For the purpose of this local law—

- (a) the form of the infringement referred to in section 9.17 of the *Local Government Act 1995* is to be in or substantially in the Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (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 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

[clause 2.1(2)(a)]

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

- A. 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;
 - (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement sheet;
 - (c) the sheets to be lapped and capped with the extruded “snap fit” type capping in accordance with the manufacturers written instructions; and
 - (d) the height of the fence to be 1800mm except with the respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.
- B. Colorbond metal fencing systems erected in accordance with the manufacture’s specifications and instructions. The height of the fence is to be 1800mm except within the front setback area for which there is no minimum height but which is subject to clause 3.1.

Schedule 2

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

[clause 2.1(2)(b)]

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 nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;

- (b) intermediate posts to be a minimum of 37mm nominal bore x 3.15mm a maximum 3.5m centres and with footings of a 225mm x 600mm;
 - (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and 2 at each corner post and with footings 225mm x 600mm;
 - (d) cables to be affixed to the top, centre and bottom of all post and to consist of 2 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 which are to be 3 strands of barbed wire carrying the fence to a height of 2400mm in accordance with clause 4.2(3) of this local law; and
 - (f) galvanised link mesh wire to be 2000m 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 the 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 constructed to the minimum specifications referred to in Item B of Schedule 1.
- C.** A fence constructed of painted or galvanised steel or 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.

Dated this sixth day of January 2014.

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

PATRICK HILL, President.
STEVEN DECKERT, Chief Executive Officer.
