

Local Government Act 1995

TOWN OF COTTESLOE



FENCING LOCAL LAW

Gazetted on 9 August, 2001

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That under the powers conferred by the *Local Government Act 1995* (the Act) and under all other powers enabling it, the Council of the Town of Cottesloe resolved on the 22nd day of May, 2000, to make the proposed Fencing Local Law (as follows), and to proceed with the making of the local law in accordance with section 3.13 of the Act.

PART 1 - PRELIMINARY

1. Citation

This Local Law may be cited as the Town of Cottesloe Fencing Local Law.

2. Repeal

The Town of Cottesloe Fencing By-Law No. 4 as published in the Government Gazette of 4 August, 1965 and amended in the Government Gazette of 31 March, 1971, is repealed.

3. Application of Local Law

This local law applies throughout the Town of Cottesloe.

4. Interpretation

In this local law, unless the context requires otherwise:

"Act"	means the Dividing Fences Act 1961;
"application"	means a written submission signed by the owner of the property of the proposal to erect a fence, property details accompanied with relevant fee, elevations and site plan detailing the proposed fence location and design including materials and finishes;
"AS"	means an Australian Standard published by the Standards Association of 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 predominant use of the lot;
"dangerous"	in relation to any fence means: <ul style="list-style-type: none"> (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 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;
"freestanding fence"	means a structure erected to function as a fence and which does not form part of any other building;
"frontage"	means the boundary line between a lot and the thoroughfare upon which that lot abuts;
"front setback area"	has the meaning given to it for the purposes of a Town Planning Scheme.
"height"	in relation to a fence means the vertical distance between: <ul style="list-style-type: none"> (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 lower ground level, immediately below that point;
"licence"	refers to a letter of approval issued by the Building Surveyor as a representative of the local government;
"local government"	means the Town of Cottesloe;
"lot"	has the meaning given to it in and for the purposes of the Town Planning and Development Act 1928;
"notice of breach"	means a notice referred to in clause 16(1);

"primary street"	means in the case of a lot with one or more frontages to a thoroughfare, the street which the Council determines is the primary street frontage;
"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;
"Schedule"	means a Schedule to this local law;
"secondary street"	means in the case of a lot with one or more frontages to a thoroughfare, the thoroughfare(s) other than the primary street;
"secondary street setback area"	means the area between a lot boundary and a building constructed on the lot, on the secondary street applicable to the lot;
"setback area"	has the meaning given to it for the purposes of a Town Planning Scheme;
"sufficient fence"	means a fence described in clause 6 or otherwise approved by Council;
"town planning scheme"	means a town planning scheme of the local government made under the Town Planning and Development Act 1928.

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

6. Sufficient Fences

- (1) Unless by agreement between the owners of adjoining properties and Council, a person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Subject to sub-clauses (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 First Schedule; and

- (b) on a Commercial Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule.
- (3) Where a fence is erected on or near the boundary between 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.
- (4) Unless the Building Surveyor specifies otherwise, a sufficient fence on a boundary between lots other than those specified in sub clause (3) is a dividing fence constructed in accordance with the specifications and requirements of the Second Schedule.
- (5) Notwithstanding any other provisions in this local law, a fence 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

7. Dividing Fences

- (1) In determining an application for a licence in respect of a fence, the Building Surveyor may approve the erection of a fence of a height greater than 900mm 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 or adjoining right of way.
- (2) The provision of sub-clause (1) shall not apply to a fence:
 - (a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare or right of way; or
 - (b) that does not adjoin a footpath.

8. Fences Within Front Setback Areas

- (1) A person shall not, without the written consent of the Building Surveyor, modify an existing fence to create or erect a freestanding fence greater than 900mm in height within the front setback area of a Residential Lot within the district.
- (2) To obtain the approval of the Building Surveyor for a fence within the front setback areas greater than 900mm in height, the fence shall be of an open aspect design in accordance with the specifications.
- (3) Side boundary or secondary street boundary fences which fall within the front setback areas, must comply with requirements of front setback fencing i.e. no greater than 900mm unless of an open aspect design.

- (4) Any application for a fence must include provision of sight lines where a boundary fence abuts the footpath. Sight lines must be provided for neighbour properties, if neighbour garages are within two (2) metres of the applicant's property. Sight lines are satisfied by open aspect requirements.
- (5) Where any new application for a driveway is to occur within two (2) metres of a dividing fence, the existing dividing fence must be modified to be open aspect within front setbacks, where a footpath abuts this property.

9. Maintenance of Fences

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

10. General Discretion of the Local Government

- (1) Notwithstanding clause 6, the local government may consent in exceptional circumstances, 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 authorised 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;
 - (b) the safety or convenience of any person and;
 - (c) the impact of the fence on the streetscape.

PART 4 - FENCING MATERIALS

11. Fencing Materials

- (1) A person shall construct a fence on a Residential Lot or a Commercial Lot from only brick, stone, concrete, wrought iron, tubular steel framed, link mesh, timber (including brushwood), plastic coated or galvanised link mesh, corrugated fibre reinforced cement sheeting, colour bonded metal 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 sub clause (1), that approval shall be conditional on the applicant, painting or treating the pre-used material as directed by the Building Surveyor.

12. 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 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 a Residential Lot shall not erect or affix to any fence on such a lot any barbed wire or other material with spiked or jagged projections, with the exception of ornamental spikes, unless the prior written approval of the Building Surveyor has been obtained.
- (4) An owner or occupier of a lot shall not affix, permit to be affixed, or allow to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.

PART 5 - ELECTRIFIED AND RAZOR WIRE FENCES

13. Requirement 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 sub clause (2); or
 - (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under sub clause (3).
- (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 3016:1994; and
 - (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations or other commercial activities, 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;
 - (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 referred to in subclasses (2) or (3) 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.
- (5) An application for a licence referred to in subclasses (2) or (3) 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.

14. Transfer of a Licence

A licence referred to in clause 13 shall transfer with the land to any new occupier or owner of the lot.

15. Cancellation of a Licence

Subject to Division 1 Part 9 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

16. 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 and 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, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be in a court of competent jurisdiction.

PART 7 - OFFENCES

17. 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.

18. 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.

19. 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;
- (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
Clause 6(2)(a)**

**SPECIFICATIONS FOR A SUFFICIENT FENCE
ON A RESIDENTIAL LOT**

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

1. An open aspect fence within the front setback area that satisfies the following specifications:
 - (a) Columns, piers and posts in the main fence alignment shall not exceed 2100mm in height, and shall not exceed 600mm x 600mm in depth and breadth, and shall not be closer than 1800mm clear of the adjoining columns, piers and posts face.
 - (b) The lower portion of the infill panel may be solid material to a height of 900mm above natural ground level.
 - (c) The remainder of the infill panel above 900mm shall be open timber, wrought iron, steel or aluminium palings, or a material approved by the Building Surveyor, spaced to ensure the width between each paling is at least equal to the width of the paling, with a minimum space of 50mm and a minimum open aspect of 50% of the infill panel, and shall not exceed a height of 1800mm above natural ground level.
2. Any type of professionally manufactured timber fence, erected in accordance with the manufacturer's specifications.
3. Any corrugated fibre reinforced pressed cement sheet fence, erected in accordance with the manufacturer's specifications.
4. 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.
5. A steel sheet colourbond fence, erected in accordance with the manufacturer's specifications.
6. Dense brushwood erected in accordance with the manufacturer's specifications.

**Second Schedule
Clause 6(2)(b)**

**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A
COMMERCIAL LOT**

Each of the following is a "sufficient fence" on a Commercial Lot:

1. An open aspect fence within the front setback area that satisfies the following specifications:
 - (a) Columns, piers and posts in the main fence alignment shall not exceed 2100mm in height, and shall not exceed 600mm x 600mm in depth and breadth, and shall not be closer than 1800mm clear of the adjoining columns, piers and posts face.
 - (b) The lower portion of the infill panel may be solid material to a height of 900mm above natural ground level.
 - (c) The remainder of the infill panel above 900mm shall be open timber, wrought iron, steel or aluminium palings, or a material approved by the Building Surveyor, spaced to ensure the width between each paling is at least equal to the width of the paling, with a minimum space of 50mm and a minimum open aspect of 50% of the infill panel, and shall not exceed a height of 1800mm above natural ground level.

2. A fence constructed of PVC coated –
 - (a) rail-less link;
 - (b) chain; or
 - (c) steel mesh;
 - i. 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;
 - ii. 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;
 - iii. the centre and bottom steel cable wire is to be 3.15mm in diameter and double twisted;
 - iv. 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.

Dated this _____ day of _____ 2001.

The Common Seal of the)
Town of Cottesloe was)
affixed by resolution of the Council
in the presence of:)

.....
John Hammond, Mayor

.....
Barry Austin, Chief Executive Officer
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