

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

FENCING LOCAL LAW 2016

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LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

FENCING LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Capel resolved 22nd June 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Capel Fencing Local Law 2016*.

1.2 Commencement

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

1.3 Repeal

The *Shire of Capel Local Laws Relating to Fencing* published in the *Government Gazette* of 04 July 2001 is repealed.

1.4 Application of local laws

This local law applies throughout the district.

1.5 Interpretation

In this Local Law, unless the context requires otherwise—

Act means the *Local Government Act 1995*;

applicant means a person who applies for an approval;

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;

application fee means the fee determined by the local government under section 6.16—6.19 of the Act and payable upon lodgement of an application for an approval and which relates to the lodgement, assessment and determination of the application;

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;

AS or AS/NZS means an Australian Standard or an Australian/New Zealand Standard published by Standards Australia and available for viewing free of charge at the Shire of Capel Administration office;

building line means a theoretical line created by the forward most wall of the dominant building facing a street frontage;

boundary fence means a fence constructed on the boundary of a lot which abuts a thoroughfare;

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 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 which does not comply with Part 6 of 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, 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 means a fence that separates the lands of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary;

electrified fence means a fence carrying or designed to carry an electric charge;

fence means any structure used or functioning as a barrier, irrespective of where it is located and includes any affixed gate or screening;

height in relation to a fence means the vertical distance between the top of the fence at any point and—

- (a) the ground level; or
- (b) where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point; or
- (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;

hours of business operations means the hours of the day during which business is usually conducted;

Industrial Lot means a lot where an industrial use—

- (a) is or may be permitted under the planning scheme; and
- (b) is or will be the predominant use of the lot;

Large Residential Lot means a lot having a density code less than or equal to R5 in the planning scheme;

local government means the Shire of Capel;

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

occupier has the meaning given to it in and for the purposes of the *Local Government Act 1995*;

owner has the meaning given to it in and for the purposes of the *Dividing Fences Act 1961*;

planning approval means an approval issued by the local government under a planning scheme;

Planning Scheme means a town or local planning scheme made in accordance with the *Planning and Development Act 2005* and operational in the district;

primary street setback area means the area between the building line of a lot and the front boundary of that lot;

public place includes—

- (a) a street, way or place which the public are allowed to use, whether the street, way or place is or is not on private property;
- (b) parklands, squares, reserves and other lands set apart for the use and enjoyment of the public; and
- (c) all lands vested in or under the care, control or management of the local government;

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

road reserve means land reserved for the purpose of a road;

Rural Lot means a lot zoned 'rural' in the planning scheme;

screening means any perforated panels or trellises composed of solid or obscured translucent panels;

Small Residential Lot means a lot having a density code greater or equal to R10 in the Planning Scheme;

Schedule means a Schedule to this local law;

Special Rural Lot means a lot zoned 'special rural' or 'rural residential' in the planning scheme;

sufficient fence means a fence described in clause 2.1;

uniform fence means a fence erected by a developer or subdivider in accordance with a subdivision or development approval which divides a lot from a public place such as pedestrian access way, public open space or road reserve;

thoroughfare has the meaning given to it in the Act; and

visually permeable means the surface of a fence which has—

- (a) continuous vertical or horizontal gaps of at least 50mm width occupying not less than one third of its face in aggregate of the entire surface or where gaps are narrower than 50mm, occupying not less than one half of its face in aggregate of the entire surface, as viewed directly from the street; or
- (b) a surface offering equal or lesser obstruction to view.

1.6 Relationship with other laws

(1) In the event of any inconsistency between the provisions of a local planning scheme and the provisions of this local law, the provisions of the planning scheme are to prevail.

(2) Nothing in this local law effects a provision in any written law in respect of a building permit for a fence.

PART 2—SUFFICIENT FENCE

2.1 Sufficient fence

- (1) A person shall not erect a dividing fence or fence that is not a sufficient fence, unless otherwise approved or required by the local government.
- (2) A dividing fence or fence lawfully erected prior to this local law coming into operation constitutes a sufficient fence.
- (3) Subject to subclause (4) and (5), a sufficient fence—
 - (a) on a Small Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 1 and located behind the specified building line;
 - (b) on a Large Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2 and located behind the specified building line;
 - (c) 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 Schedule 3; and
 - (d) on a Rural Lot and on a Special Rural Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 4.
- (4) Where a fence is erected on or near the boundary between a—
 - (a) Small Residential Lot or a Large 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) Small Residential Lot or a Large 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 3;
 - (c) Small Residential Lot or a Large Residential Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1 or 2 respectively;
 - (d) Small Residential Lot or a Large Residential Lot and a Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1 or 2 respectively; and
 - (e) Special Rural Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 4.
- (5) Unless otherwise approved or required by the local government a sufficient fence on a boundary between lots other than those specified in subclause (4) is a dividing fence constructed in accordance with the specifications and requirements of Schedule 3.

PART 3—FENCING WITHIN THE PRIMARY STREET (FRONT) SETBACK

3.1 Fences within primary street (front) setback area

- (1) On a Small Residential Lot a fence erected within the primary street setback area shall—
 - (a) with the exception of piers, be visually permeable above 0.75m;
 - (b) not exceed a height of 1.8m; and
 - (c) be constructed of aluminium tubular pool style fencing, face finished brick, render, brushwood, stone or timber palings, or a combination of the aforementioned materials, or similar, that complement the dwelling and do not detract from the streetscape.

Fibre cement sheets or sheet metal are not considered suitable.

- (2) On a Large Residential Lot a fence erected within the primary street setback area shall—
 - (a) not exceed a height of 1.2m; and
 - (b) be constructed of posts and wire.
- (3) On a Commercial Lot, no fence shall be erected forward of the building line.
- (4) On an Industrial Lot, a fence erected within the primary street setback area shall be visually permeable above 1.2m and not exceed a height of 2.4m.
- (5) All fences shall be truncated or reduced to no higher than 0.75m within 1.5m adjoining a vehicle access point where a driveway meets a public street and where 2 streets intersect.
- (6) Subclause (5) shall not apply to a visually permeable fence that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.

PART 4—FENCING MATERIALS, SCREENING AND MAINTENANCE

4.1 Fencing materials

- (1) Subject to clause 2.1, a person shall only construct a fence from materials specified in the Schedules of this local law, unless otherwise approved or required by the local government.
- (2) Uniform fencing shall be constructed predominantly from new materials as described in the Schedules and where required by the local government, incorporate visually permeable sections above 1.2m to the satisfaction of the local government.

(3) Pre-used materials shall not be permitted in the construction of a fence, unless the pre-used materials are structurally fit for the purpose, painted, treated and/or upgraded to the satisfaction of the local government.

(4) No person shall erect a fence of impervious material in any place, position or location where it will, or is likely to, act as a barrier to or restrict the flow of a natural watercourse.

4.2 Screening

(1) Any screening affixed to a fence shall be designed to integrate with the colours, materials and specifications of that sufficient fence to the satisfaction of the local government.

(2) On a Rural Lot or Special Rural Lot, no person shall affix any screening to a fence.

(3) Screening affixed to a fence shall be installed and maintained in accordance with the manufacturers specifications and not compromise the structural integrity of a fence.

4.3 Barbed wire or other material with spiked or jagged projections

(1) A person shall not erect or affix to any fence any barbed or razor wire or other material with spiked or jagged projections except in accordance with this clause.

(2) An owner or occupier of a Commercial or 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 vertically or at an angle of 45 degrees, and unless the bottom row of wire or other materials is not less than 2m from the ground level.

(3) If the posts which carry the barbed wire or other materials referred to in subclause (2) 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.

(4) An owner or occupier of a lot shall not affix or allow to remain as part of any fence or wall on that lot, whether internal or external, any broken glass or razor wire.

(5) An owner or occupier of a Rural Lot or Special 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.

4.4 Maintenance of fences

(1) An owner or occupier of a lot on which a fence is erected shall maintain the fence in good condition and prevent it from becoming damaged, dangerous, dilapidated, unsightly or detrimental to the amenity of the locality.

(2) An owner or occupier of a lot on which a uniform fence is erected shall not alter the fence in any way, or enclose or screen any visually permeable sections of the fence.

4.5 Gates in fences

Any gate or door must not encroach into or over any other property.

PART 5—RIGHT-OF-WAYS, PUBLIC ACCESS WAYS OR ROAD RESERVES

5.1 Fences across right-of-ways, public access ways or road reserves

A person must not, without the written consent of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or road reserve so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

PART 6—ELECTRIFIED FENCES

6.1 Electrified fencing

(1) On a Rural Lot electrified fencing shall comply with *AS/NZS 3014:2003 Electrical Installations—Electric Fences* (as amended from time to time).

(2) On an Industrial Lot, an electrified 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 Western Power;

(c) be capable of being rendered inoperable during the hours of business operations, if any, on the lot where it is erected; and

(d) be designed to integrate with the colours, materials and specification of a sufficient fence.

Australia/New Zealand Standards *AS/NZS 3014:2003 Electrical installations—Electric fences* and *AS/NZS 3016:2002 Electrical Installations—Electric Security Fences* are available for viewing free of charge at the Shire of Capel Administration office.

PART 7—APPLICATION REQUIREMENTS

7.1 Requirements for an approval from local government

(1) Where approval is required from the local government under this local law and approval is not required in the form of planning approval or a building permit, then a written application to the local government to seek an approval under this local law will apply.

- (2) An owner or occupier of a lot, other than a Rural Lot or Industrial Lot, must not—
 - (a) have or use an electrified fence on that lot—
 - (i) without first obtaining a building permit or written approval of the local government and
 - (ii) except in accordance with that permit or approval; or
 - (b) construct a fence wholly or partly of barbed wire or other material with jagged or spiked projections on that lot—
 - (i) without first obtaining a building permit or written approval of the local government; and
 - (ii) except in accordance with that permit or approval.
- (3) Approval to install an electrified fence on a fence will not be given—
 - (a) if the lot 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.

7.2 Application for approval

- (1) An owner of a lot may apply to the local government for any discretionary matter contained within this local law.
- (2) An application must be—
 - (a) in writing in a form approved by the local government;
 - (b) accompanied by any document or information that is required by the local government; and
 - (c) accompanied by an application fee.

7.3 Determination of applications

- (1) The local government may approve the erection of a fence that does not comply with the requirements of this local law.
- (2) In determining whether to grant its consent to the erection, 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 impact on—
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the streetscape or neighbouring properties.
- (3) All 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 to 6.19 of the *Local Government Act 1995*.
- (4) An application submitted to the local government under this local law may be—
 - (a) approved by the local government;
 - (b) approved by the local government subject to conditions as the local government sees fit; or
 - (c) rejected by the local government.
- (5) Where the local government approves an application subject to conditions, the applicant must comply with those conditions.
- (6) Where the local government approves an application under this clause, it shall issue an approval in the form determined by the local government.
- (7) The local government may by written notice amend a condition imposed under subclause (4)(b).
- (8) An amendment under subclause (7) is effective from the date specified in the notice.

7.4 Transfer of an approval under this local law

- (1) An approval which is provided by the local government under this local law is deemed to transfer to each successive owner or occupier of the lot to which the approval applies.
- (2) Where an approval is transferred under this clause, the successive owner or occupier may apply to the local government for a written confirmation of this transfer.
- (3) If the local government approves an application under this clause, it may issue a written confirmation to the applicant in the form determined by the local government.

7.5 Cancellation of an approval

The local government may cancel an approval if—

- (a) the owner or occupier requests the local government to do so;
- (b) the fence to which the approval applies has been demolished and is not rebuilt for a period of 6 months;
- (c) the circumstances have changed in such a way that an approval for the fence could no longer be granted under the local law;
- (d) the owner or occupier fails to comply with a condition of the permit or breaches a provision of this local law in respect of the fence; or
- (e) the owner or occupier fails to comply with a notice of breach issued under clause 8.1.

7.6 Objections and appeals

Division 1 of Part 9 of the *Local Government Act 1995* applies to a decision under this local law to—

- (a) refuse an application for an approval;
- (b) impose or vary an approval condition;
- (c) cancel an approval; or
- (d) give a person a notice under clause 8.1.

PART 8—OFFENCES AND ENFORCEMENT

8.1 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 or occupier of that lot.

(2) A notice shall specify—

- (a) the provision of this local law that has been breached;
- (b) 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, 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.

(4) The provisions of subclause (3) are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry onto land will be in accordance with Part 3, Division 3 of that Act.

8.2 Offences

(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 person is prohibited from doing, commits an offence.

(2) An offence against a clause specified in Schedule 5 is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.

(3) Any person who commits an offence under this local law is liable upon conviction to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

8.3 Modified penalties

Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$200.

8.4 Infringement notices

For the purposes of this local law—

- (a) 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*; and
- (b) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A SMALL RESIDENTIAL LOT

[Clause 2.1(3)(a)]

(1) Refer to clause 3.1 for fences within the primary street setback area.

(2) Each of the following is a sufficient fence on a Small Residential Lot—

- (a) A timber fence which satisfies the following specifications—
 - (i) an average height of 1.8m;
 - (ii) construction to be in accordance with the manufacturers specifications;
 - (iii) timber paneling to provide a solid cover to provide a solid screen except where the fence is located within the primary street setback area; and
 - (iv) susceptible timber is to be treated for protection from termite attack in accordance with *AS 3660.1-2014 Termite management—Part 1: New building work* (as amended from time to time).

Australian Standard AS 3660.1-2014 Termite management—Part 1: New building work is available for viewing free of charge at the Shire of Capel Administration office.

- (b) Fibre reinforced pressed cement sheeting which satisfies the following specifications—
 - (i) an average height of 1.8m; and
 - (ii) construction to be in accordance with the manufacturers specifications.
- (c) Masonry (including brick, stone or concrete), which satisfies the following specifications—
 - (i) an average height of 1.8m except where located within the primary street setback area (refer to Part 3 of this local law); and
 - (ii) construction to be in accordance with *AS3700-2014 Masonry structures* (as amended from time to time).

Australian Standard *AS3700-2014 Masonry Structures* is available for viewing free of charge at the Shire of Capel Administration office.
- (d) Metal panel (eg Colourbond) or PVC panel (eg Duralok) fencing systems that satisfy the following specifications—
 - (i) an average height of 1.8m, except where located within the primary street setback area (refer to Part 3 of this local law); and
 - (ii) construction to be in accordance with the manufacturers specifications.
- (e) A composite of the above fences such as timber posts with solid sheet metal infill and height as specified above.

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A LARGE RESIDENTIAL LOT.

[Clause 2.1(3)(b)]

- (1) Refer to clause 3.1 for fences within the primary street setback area.
- (2) A sufficient fence on a Large Residential Lot is a fence of posts and wire construction, the specifications for which are—
 - (a) have an average height of 1.2m;
 - (b) pine timber posts shall be impregnated with a termite and fungicidal preservative;
 - (c) wire shall be high tensile galvanised wire and not less than 2.5mm in diameter;
 - (d) a minimum of 5 wires shall be used;
 - (e) galvanised iron posts may be used; and
 - (f) construction shall be in accordance with manufacturers specifications.
- (3) No boundary fence on a Large Residential Lot shall be constructed of the following materials—
 - (a) fibro cement;
 - (b) metal sheeting; or
 - (c) wooden pickets.

Schedule 3

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

[Clause 2.1(3)(c)]

- Each of the following is a sufficient fence on a Commercial Lot and an Industrial Lot—
- (1) A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—
 - (a) generally a height of 2m with posts up to a maximum height of 2.4m with barbed wire mesh where permitted by this local law; and
 - (b) construction to be in accordance with the manufacturers specifications.
 - (2) A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Schedule 1.
 - (3) A fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1.8m but no greater than 2.4m.
 - (4) Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 1.

Schedule 4
SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT AND SPECIAL
RURAL LOT

[Clause 2.1(3)(d)]

In the case of a non-electrified fence, a sufficient fence on a Rural Lot and a Special Rural Lot is a fence of post and wire construction, the minimum specifications for the following purposes which are—

- (1) A fence to contain cattle and horses which satisfies the following specifications—
 - (a) have an average height of 1.2m;
 - (b) pine timber posts shall be impregnated with a termite and fungicidal preservative;
 - (c) wire shall be high tensile galvanised wire and not less than 2.5mm;
 - (d) a minimum of 5 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;
 - (e) galvanised iron posts may be used;
 - (f) star pickets may be used for intermediate posts; and
 - (g) construction shall be in accordance with manufacturers specifications.
- (2) A mesh fence to contain sheep and goats shall satisfy the specifications of subclause (1) with the further requirement—
 - (a) wire shall be hinge joint or ring lock with 2 plain high tensile wires of not less than 2.5mm located above the mesh and connected to posts in all cases; and
 - (b) the mesh wire shall be clipped to the lower of the 2 plain wires at 3m centres.
- (3) Star pickets used for intermediate posts on Special Rural Lots shall have a PVC safety cap on the top of each picket.
- (4) An electrified fence having 4 wires only is a sufficient fence if constructed generally in accordance with subclause (1).

Schedule 5
OFFENCES FOR WHICH MODIFIED PENALTIES APPLY

[Clause 8.2(2)]

Shire of Capel
FENCING LOCAL LAW 2016

Offence No.	Clause No.	Nature of offence	Modified penalty
1	2.1	Erect a dividing fence or boundary fence on a lot that does not meet the minimum requirements for a sufficient fence	\$200
2	4.1(3)	Use pre-used materials in the construction of a fence without approval	\$200
3	4.4(1)	Failure to maintain a fence in good condition / prevent fence from becoming dangerous or dilapidated	\$200
4	4.5	Erect or maintain a gate in a fence that encroaches into or over any other property	\$200
5	5.1	Erect or maintain a fence/obstruction temporary or permanent across a right-of-way, public access way or road reserve without consent	\$200
6	7.1(2)	Construct or use an electrified fence or a fence wholly or partly of barbed wire or other material with spiked or jagged projections without a building permit or approval	\$200
7	8.3	Other offences not specified	\$200

Dated 22nd June 2016.

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

M. T. SCOTT, President.
P. F. SHEEDY, Chief Executive Officer.