

LOCAL GOVERNMENT ACT 1995

CITY OF CANNING

FENCING LOCAL LAW 2021

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LOCAL GOVERNMENT ACT 1995

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FENCING LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Canning resolved on 17 August 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Title

This local law may be cited as the *City of Canning Fencing Local Law 2021*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

Part XIV of the *City of Canning Consolidated Local Laws*, published in the *Government Gazette* on 31 March 2000, is repealed.

1.5 Terms used

(1) In this local law, unless the context otherwise requires—

Act means the *Dividing Fences Act 1961*;

applicant means a person who makes an application for approval under this local law;

approval means an approval under Part 4;

AS or AS/NZS means an Australian or Australian/New Zealand Standard as published by Standards Australia and as amended from time to time;

authorised person means a person appointed under section 9.10 of the *Local Government Act 1995* to perform any of the functions of an authorised person under this local law;

barbed wire fence means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals;

boundary fence has the meaning in the Act;

building permit means a permit granted under section 20 of the *Building Act 2011*;

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

dangerous, in relation to a fence, means—

- (a) an electrified fence other than a fence approved by the local government under this local law or 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, asbestos fibre, razor wire or any other potentially harmful projection or material;
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause; or
- (e) a fence that has become dangerous through lack of maintenance or repair;

district means the district of the local government;

dividing fence has the meaning in the Act;

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

fence means any structure, not including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

front boundary means the boundary line between a lot and the thoroughfare on which that lot abuts or, in the case of a lot abutting on more than one thoroughfare, the boundary line between the lot and the primary thoroughfare;

front setback area, in relation to a lot, means the area between the building line of the lot and the front boundary of the lot;

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 local planning scheme; and
- (b) is or will be the predominant use of the lot;

local government means the City of Canning;

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

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

notice of breach means a notice referred to in clause 5.1;

occupier has the meaning in the *Local Government Act 1995*;

owner, has the meaning in the *Local Government Act 1995*;

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

razor wire fence means a coiled strong wire with pieces of sharp cutting edges set across it at close intervals;

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, or which retains soil or structures, 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;

Schedule means a schedule to this local law;

structural engineer means a qualified engineer trained to understand and calculate the stability, strength and rigidity of built structures for buildings and non-building structures;

sufficient fence means a fence described in clause 2.1; and

thoroughfare has the meaning in the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government.

(2) A term that is used in this local law and is not defined in subclause (1) has the meaning in the *Local Government Act 1995* or, if not defined in the *Local Government Act 1995*, the meaning in the Act.

1.6 Fees and charges

All fees and charges applicable under this local law are to 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*.

1.7 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 local planning scheme are to prevail.

(2) Nothing in this local law affects the need for compliance, in respect of a fence, with—

- (a) any relevant provisions of a local planning scheme; and
- (b) any relevant provisions that apply if a building permit is required for that fence under the *Building Act 2011* or *Building Regulations 2012*.

PART 2—SUFFICIENT FENCES

2.1 Sufficient fences

(1) Subject to clause 2.2, a person must not erect a dividing fence or a boundary fence that is not a sufficient fence.

(2) A dividing fence, or a fence lawfully erected prior to this local law coming into operation, constitutes a sufficient fence.

(3) Subject to subclauses (4) and (5), a sufficient fence on a—

- (a) Residential Lot is a dividing fence or a boundary fence erected and maintained in accordance with the specifications and requirements of Schedule 2;

- (b) Commercial Lot or an Industrial Lot is a dividing fence or a boundary fence erected and maintained in accordance with the specifications and requirements of Schedule 3; and
 - (c) Rural Lot is a dividing fence or a boundary fence erected 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) Residential Lot and an Industrial Lot or a Commercial Lot, a sufficient fence is a dividing fence erected and maintained in accordance with the specifications and requirements of Schedule 2;
 - (b) Residential Lot and a Rural Lot, a sufficient fence is a dividing fence erected and maintained in accordance with the specifications and requirements of Schedule 2; and
 - (c) Commercial or Industrial Lot and a Rural Lot, a sufficient fence is a dividing fence erected and maintained in accordance with the specifications and requirements of Schedule 3.
- (5) Unless the local government determines otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (4) is a dividing fence erected in accordance with the specifications and requirements of Schedule 2.

2.2 Approval of other fences

The local government may approve the erection or maintenance of a dividing fence which is not a sufficient fence where all of the owners of the lots to be separated by the dividing fence make an application for approval for that purpose.

PART 3—FENCING MATERIALS AND REQUIREMENTS

3.1 Gates in fences

A person must not erect a gate in a fence which does not—

- (a) open into the lot; or
- (b) open by sliding parallel and on the inside of the fence, which it forms part of, when closed,

unless with the written approval of the local government.

3.2 Maintenance of fences

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

3.3 Fencing materials requiring written approval

- (1) A person must not erect a barbed wire fence or an electrified fence, on a Residential Lot or Commercial Lot.
- (2) A person must not erect a barbed wire fence or an electrified fence on an Industrial Lot or a Rural Lot, without first obtaining the written approval of the local government.
- (3) The local government shall not approve an application for an electrified fence under subclause (2)—
 - (a) in respect of a lot which abuts a Residential Lot;
 - (b) unless the electrified fence complies with AS/NZS 3016:2002 Electrical installations—Electric security fences; 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.

3.4 Prohibited fencing materials

In erecting a fence a person must not use—

- (a) broken glass or any other potentially harmful projections or material;
- (b) asbestos fibre;
- (c) material that is likely to collapse or fall, or part of which is likely to collapse or fall from any cause; or
- (d) razor wire.

PART 4—APPROVALS

4.1 Application for approval

- (1) Where a person is required to obtain the approval of the local government under this local law, and approval is not required in the form of planning approval or a building permit, that person must apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law must—
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant and the owner of the lot;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.
- (3) Before determining an application for approval, the local government may require the applicant to provide additional information reasonably related to the application.

(4) The local government may refuse to consider an application for approval which is not in accordance with subclauses (2) and (3).

4.2 Decision on application for approval

- (1) The local government may, in respect of an application for approval—
- (a) grant the application, unconditionally or subject to any conditions it considers appropriate; or
 - (b) refuse to grant the application.
- (2) In determining whether to grant its approval under subclause (1), 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;
 - (b) the safety or convenience of any person; and
 - (c) the visual amenity of the locality.
- (3) If the local government grants the application subject to conditions, those conditions may relate to matters such as—
- (a) the location, type and construction of a fence;
 - (b) the height of a fence; and
 - (c) in the case of an electric fence, the operating time and duration.
- (4) If the local government grants an application for approval, it is to issue to the applicant an approval in the form determined by the CEO.
- (5) If the local government refuses to grant an application for approval, it must give written notice of that refusal to the applicant.

4.3 Compliance with approval

Where an application for approval has been granted, the applicant and the owner or occupier of the lot to which the approval relates, must comply with the terms and any conditions of that approval.

4.4 Duration of approval

Unless otherwise stated in the form of approval, an approval granted under this local law—

- (a) runs with the lot to which it relates;
- (b) may be relied on by any subsequent occupier or owner of the lot; and
- (c) may be enforced by the local government against a subsequent occupier or owner of the lot.

4.5 Revocation of an approval

The local government may revoke an approval if—

- (a) the owner (or the occupier with the owner's written consent) requests the local government to do so;
- (b) the fence to which the approval relates is being, or has been, demolished and is not proposed to be, or has not been, rebuilt for a period of at least 6 months;
- (c) the circumstances are such that the approval could not be issued under this local law; or
- (d) the owner or occupier fails to comply with a condition of the approval or breaches a provision of this local law in respect of the fence that is the subject of the approval.

PART 5—NOTICES

5.1 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 or an authorised person may give a notice in writing (notice of breach) to the owner of that lot.
- (2) A notice of breach is to—
- (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 is required to remedy the breach within the time specified in the notice.
- (3) If an owner fails to comply with a notice of breach, the local government may (by its employees, agents or contractors) enter on 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 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 entry on to land is to be in accordance with Part 3, Division 3 of that Act.

PART 6—ENFORCEMENT

6.1 Offences

- (1) A person who—
- (a) fails to do anything required or directed to be done under this local law; or
 - (b) fails to comply with the requirements of a notice of breach; or
 - (c) does anything which under this local law that person is prohibited from doing,
- commits an offence.

(2) A person who commits an offence under this local law is liable to a maximum penalty of \$5,000 and a maximum daily penalty of \$500 in respect of each day or part of a day during which the offence has continued.

6.2 Prescribed offences

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

(2) The amount appearing in the final column of Schedule 1 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

6.3 Form of notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in sections 9.16 and 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*.

PART 7—OBJECTIONS AND REVIEW

7.1 Objections and review

When the local government makes a decision 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—PRESCRIBED OFFENCES

[Clause 6.2(1)]

Item No.	Clause No.	Nature of offence	Modified Penalty
1	2.1(1)	Erect a fence which is not a sufficient fence	\$250
2	3.1(a)	Erect a gate in a fence not opening into the lot	\$250
3	3.1(b)	Erect a gate in a fence not sliding parallel and inside a fence	\$250
4	3.2	Failure to maintain a fence in good condition to prevent the fence becoming dangerous, dilapidated or unsightly	\$250
5	3.3(1)	Erect a barbed wire or electrified fence on a Residential Lot or Commercial Lot	\$250
6	3.3(2)	Erect a barbed wire fence or electrified fence on an Industrial Lot or a Rural Lot without written approval	\$250
7	3.4	Use of prohibited fencing materials	\$250
8	4.3	Failure to comply with terms and any conditions of approval	\$250
9	6.1(1)(b)	Failure to comply with a notice of breach	\$300

SCHEDULE 2—SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

[clause 2.1(3)(a)]

Each of the identified categories in this Schedule, with minimum and maximum specifications where stated, is a sufficient fence on a Residential Lot—

1. A timber fence, a fence constructed of corrugated fibre reinforced pressed cement or steel sheeting or other non-permeable materials designed specifically for use as a fence, which satisfies the following specifications—
 - (a) the height of the fence except with respect to the front setback area to be a minimum 1800mm and a maximum of 2200mm;
 - (b) the height of the fence within the front setback area not to exceed 1200mm in height without the written approval of the local government; and
 - (c) construction to be in accordance with the manufacturer's specifications.
2. A fence constructed of masonry (including brick, stone or concrete) which satisfies the following specifications—
 - (a) the height of the fence except with respect to the front setback area, to be 1800mm;
 - (b) the height of the fence within the front setback area not to exceed 1200mm in height without the written approval of the local government;

- (c) construction to be in accordance with the AS/NZS for Masonry construction as adopted by the Building Code of Australia at the time of construction; and
 - (d) certified by a structural engineer as being appropriate for the particular site and wind terrain category.
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SCHEDULE 3—SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT OR AN INDUSTRIAL LOT

[clause 2.1(3)(b)]

Each of the identified categories in this Schedule, with minimum and maximum specifications where stated, is a sufficient fence on a Commercial Lot or an Industrial Lot—

1. A fence that meets the specifications in Schedule 2;
 2. A fence constructed of galvanised or PVC coated non-rail link mesh, chain mesh or steel mesh which satisfies the following specifications—
 - (a) at a minimum height of 1800mm and a maximum height of 2200mm; and
 - (b) construction to be in accordance with the manufacturer's specifications.
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SCHEDULE 4—SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT

[clause 2.1(3)(c)]

Each of the identified categories in this Schedule, with minimum and maximum specifications where stated is a sufficient fence on a Rural Lot—

1. A fence that meets the specifications in Schedule 2 or Schedule 3, but to a maximum height of 1200mm;
 2. A fence of post and wire construction—
 - (a) erected at a height of 1200mm;
 - (b) wire to be high tensile wire and not less than 2.5mm;
 - (c) a minimum of 5 wires to 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;
 - (d) posts to 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;
 - (e) posts to be cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn timber;
 - (f) posts to be set minimum 600mm in the ground and 1200mm above the ground; and
 - (g) strainer posts to be not less than 2250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and to be cut from indigenous timber or other suitable material. These must be placed a minimum of 1000mm in the ground.
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Dated this 20th of August 2021.

The Common Seal of the City of Canning was affixed by authority of a resolution of the Council in the presence of—

PATRICK HALL, Mayor.

STEPHEN CAIN, Chief Executive Officer.
