

**LOCAL GOVERNMENT ACT 1995**

*SHIRE OF WEST ARTHUR*

**FENCING LOCAL LAW 2021**

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# LOCAL GOVERNMENT ACT 1995

## SHIRE OF WEST ARTHUR

### 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 Shire of West Arthur resolved on 19 October 2021 to make the following local law

#### PART 1—PRELIMINARY

##### 1.1 Citation

This local law may be cited as the *Shire of West Arthur 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 Repeal

The *Municipality of the Shire of West Arthur Fencing By-Law* as published in the *Government Gazette* on 8 February 1991, is repealed.

##### 1.4 Application

This local law applies throughout the district.

##### 1.5 Terms used

In this local law unless the context otherwise requires—

**adversely affect land** has the meaning given to it in section 3 of the *Building Act 2011*;

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

**AS or AS/NZS** means an Australian or Australian/New Zealand Standard published by Standards Australia, and available for viewing free of charge at the Shire of West Arthur Administration Centre;

**authorised person** means a person authorised by the local government to perform any of the functions under this local law;

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

**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 any fence means—

- (a) an electrified fence that does not comply with clause 5.2 of this local law;
- (b) a fence containing barbed wire other than a fence constructed and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire, metal spikes or any other potentially harmful projection or material; or
- (d) a fence that 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 in section 5 of the *Dividing Fences Act 1961*;

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

**fence** means any structure used or functioning as a barrier, other than a retaining wall, irrespective of where it is located and includes a gate or door that separates the road reserve and a lot adjacent to the road reserve;

**front boundary** means the boundary that separates a thoroughfare and the front of a lot;

**front fence** means a fence in the front setback area of a lot;

**front setback area** means the area between the building line of a lot and the front boundary of that lot; measured at a right angle to the front boundary;

**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;

**industrial lot** means a lot where an industrial use—

- (a) is or may be permitted under a local planning scheme; and

(b) is or will be the predominant use of the lot;

**land** includes a house, building, work or structure in or on the land;

**local government** means the Shire of West Arthur;

**local planning scheme** means a local planning scheme and includes any structure plan adopted or approved by the local government made under the *Planning and Development Act 2005*;

**lot** means a defined portion of land depicted on a plan or diagram available from, or deposited with, the Western Australian Land Information Authority and for which a separate Crown grant or certificate of title has been or can be issued and includes a strata lot;

**masonry** includes stone, concrete, brick or other solid material;

**natural ground level**, in relation to a development, means—

(a) the level approved, for the purposes of the development, by the local government, under a local planning scheme; or

(b) in any other case, the level that existed immediately before the commencement of the development (including any site works);

**notice of breach** means a notice referred to in clause 8.1;

**occupier** has the meaning given to it in section 1.4 of the *Local Government Act 1995*;

**owner** has the meaning given to it in section 1.4 of the *Local Government Act 1995*;

**permit** means a permit issued under Part 6;

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

**repair** has the meaning given to it in section 5 of the *Dividing Fences Act 1961*;

**residential lot** means a lot where a residential use—

(a) is or may be permitted under a local planning scheme; and

(b) is or will be the predominant use or the lot;

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

**rural lot** means a lot where a rural or rural residential use—

(a) is or may be permitted under a local planning scheme; and

(b) is or will be the predominant use of the lot;

**Schedule** means a Schedule to this local law;

**secondary frontage** in the case of a lot that has a frontage and access to more than one thoroughfare, means the longer or the longest of the boundaries that separates the lot from the thoroughfare;

**set fee** means a fee determined by the local government in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*;

**sufficient fence** means a fence described in clause 2.2 or 2.3;

**thoroughfare** has the meaning given to it in section 1.4 of the *Local Government Act 1995*, but does not include a private thoroughfare that is not under the management or control of the local government; and

**visually permeable** in reference to a wall, gate, door, screen or fence that the vertical surface when viewed directly from the street or other public space has—

(a) continuous vertical or horizontal gaps of 50mm or greater width occupying not less than one third of the total surface area;

(b) continuous vertical or horizontal gaps less than 50mm in width, occupying at least one half of the total surface area in aggregate; or

(c) a surface offering equal or lesser obstruction to view; and

**watercourse** means a river, stream or creek in which water flows in a natural channel, whether permanently or intermittently.

#### **1.6 Requirements of planning legislation and local planning scheme**

Nothing within this local law affects any provision of—

(a) the *Planning and Development Act 2005*, or any regulations or orders made under that Act; or

(b) a local planning scheme.

#### **1.7 Requirements of Building Act 2011**

Nothing in this local law affects a provision in any written law in respect of a building permit for a fence.

#### **1.8 Transitional provision**

A dividing fence or fence lawfully constructed prior to this local law coming into operation constitutes a sufficient fence.

## PART 2—SUFFICIENT FENCES

### 2.1 Sufficient fences—requirement

A person shall not construct or alter a dividing fence that does not satisfy the requirements of a sufficient fence.

### 2.2 Sufficient fences—generally

Subject to clauses 2.3 and 2.4, a sufficient fence—

- (a) on a residential lot is a dividing fence constructed and maintained in accordance with Schedule 1;
- (b) on a commercial lot or an industrial lot is a dividing fence constructed and maintained in accordance with Schedule 2; and
- (c) on a rural lot is a dividing fence constructed and maintained in accordance with Schedule 3.

### 2.3 Sufficient fences—between lots having different requirements

Subject to clause 2.4, where a fence is constructed on or near the boundary between—

- (a) a residential lot and a lot zoned for any other purpose, a sufficient fence is a fence constructed and maintained in accordance with Schedule 1; and
- (b) a commercial lot or industrial lot and a rural lot, a sufficient fence is a fence constructed in accordance with Schedule 3.

### 2.4 General discretion of the local government

(1) Notwithstanding the provisions of clauses 2.1, 2.2 or 2.3, and subject to Part 6, an authorised person may issue a permit for the construction or repair of a dividing fence that is not a sufficient fence where all of the owners of the lots adjoining the fence give written consent for a permit for that purpose.

(2) An agreement in respect of a dangerous fence is taken not to be an agreement between owners of adjoining properties for the purposes of subclause (1).

## PART 3—FENCING GENERALLY

### 3.1 Fences within front setback areas

A person shall not construct a fence more than 1200mm in height, within the front setback area of a residential lot without a permit.

### 3.2 Fences on secondary frontages

Subject to clauses 3.1 and 3.3 a person shall not construct or maintain a fence on any secondary frontage of a residential lot unless the fence is a sufficient fence.

### 3.3 Sightlines at vehicle access point

(1) Fences are to be truncated or reduced to a height not more than 750mm, within 1500mm where walls, fences and other structures adjoin vehicle access points where a driveway meets a thoroughfare and where two thoroughfares intersect.

(2) The provision of subclause (1) 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.

### 3.4 Obstruction of watercourse

No person shall construct 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 watercourse.

### 3.5 Gates or doors in fences

A person shall not construct a gate or door in a fence that—

- (a) encroaches into or over any other land; or
- (b) opens by sliding parallel to the fence on the outside of the fence.

### 3.6 Retaining walls

A person shall not construct a retaining wall exceeding 500mm in height unless a building permit has been granted under section 20 of the *Building Act 2011*.

### 3.7 Masonry fences and walls

A person shall not construct or a wall or fence exceeding 750mm in height constructed or partially constructed of masonry unless a building permit has been granted under section 20 of the *Building Act 2011*.

### 3.8 Alteration of ground levels

(1) A person shall not alter the natural ground level of land on or within 1000mm of the boundary of a lot, whether by removing soil or bringing onto the land any fill of any kind, by more than 500mm without a permit.

(2) A fence constructed of corrugated fibre-reinforced pressed cement shall not have more than 150mm difference in the ground levels on each side of the fence.

(3) Where land has been filled or retained to a height of more than 500mm above natural ground level at or within 1000mm of a boundary of a lot, a person shall only construct a dividing fence that is a

sufficient fence on the said filled land or retaining wall if the person produces to an authorised person the written consent of the owners of the adjoining lot.

### **3.9 Maintenance of fences**

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

(2) Where in the opinion of an authorised person, a fence is in a state of disrepair or is dangerous or is otherwise in breach of a provision of this local law, an authorised person may give a notice of breach under clause 8.1 to the owner or occupier of the lot on which the fence is constructed.

### **3.10 Fences across rights-of-way, public access ways or thoroughfares**

A person shall not construct, place or maintain a fence or obstruction across any right-of-way, public access way or thoroughfare without the approval of the local government in accordance with regulation 9 of the *Local Government (Uniform Local Provisions) Regulations 1996*.

## **PART 4—FENCING MATERIALS**

### **4.1 Prohibited materials**

A person shall not construct, maintain or allow to remain a fence that is comprised, in whole or in part of spikes, broken glass, jagged materials, barbed wire, razor wire, asbestos or any other dangerous material except to the extent provided for in Part 5.

### **4.2 Pre-used fencing materials**

(1) A person shall not construct or maintain a dividing fence from pre-used materials without a permit.

(2) Where a permit is issued for the use of pre-used materials, the materials shall be structurally fit for the purpose, and comply with any conditions imposed by an authorised person.

(3) Conditions for use of pre-used fencing materials may include but are not limited to—

- (a) painting;
- (b) treatment;
- (c) specific use or placement; and
- (d) upgrading.

## **PART 5—RESTRICTED FENCING**

### **5.1 Barbed wire fencing**

(1) An owner or occupier of a residential lot shall not affix or allow to remain any barbed wire on any fence bounding that lot.

(2) An owner or occupier of a 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.

(3) An owner or occupier of a commercial lot or industrial lot shall not construct or affix to any fence bounding that lot any barbed wire unless—

- (a) the wire or material are attached on posts vertically or at an angle of 45 degrees; and
- (b) the bottom row of wire or other materials is not less than 2000m above the ground level.

(4) If the posts that 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 shall be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach onto or over adjoining land.

### **5.2 Electrified fencing**

(1) An owner or occupier of a lot shall not construct or use an electrified fence on that lot without first obtaining a permit.

(2) Notwithstanding subclause (1), a permit is not required for an electrified fence that is—

- (a) constructed on a rural lot;
- (b) for the purpose of animal control;
- (c) installed in accordance with the manufacturer's specifications; and
- (d) not the dividing fence with a residential lot.

(3) An electrified fence for the purpose of security shall not be present on a lot unless it complies with *AS/NZS 3016:2002 Electrical Installations—Electric Security Fences*, as amended from time to time, and that is available for viewing free of charge at the Shire of West Arthur Administration Centre.

(4) A permit to have and use an electrified fence for the purpose of security shall not be issued—

- (a) in respect of a lot that is a residential lot or that portion of a fence adjoining 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 constructed.

### **5.3 Razor wire fencing**

- (1) An owner or occupier of a lot shall not construct a fence wholly or partly of razor wire on that lot without first obtaining a permit under subclause (2).
- (2) A permit to have a fence constructed wholly or partly of razor wire shall not be issued—
  - (a) in respect of a lot that is a residential lot or that portion of a fence adjoining a residential lot;
  - (b) if the fence is within 3000mm of the boundary of the lot; or
  - (c) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.

## **PART 6—PERMITS**

### **6.1 Application for a permit**

- (1) An owner of a lot may apply to the local government for a permit under this Part.
- (2) An application for a permit under this local law shall—
  - (a) provide all necessary documentation and information required for a decision;
  - (b) provide two copies of a plan and specifications of the proposed;
  - (c) engineering certification of structural or electrical engineering specifications, if required;
  - (d) be signed by the owner of the lot;
  - (e) be forwarded to the CEO together with any set fee; and
  - (f) be in the form determined by the local government from time to time.
- (3) An authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

### **6.2 Determination of an application**

- (1) An authorised person may refuse to consider an application that does not comply with clauses 6.1.
- (2) An authorised person may—
  - (a) approve an application;
  - (b) approve an application subject to conditions as the authorised person sees fit; or
  - (c) refuse an application.
- (3) In determining whether to issue a permit, an authorised person may consider, in addition to any other matter authorised to consider, whether the construction or retention of the fence would have an adversely affect land or 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.
- (4) An authorised person may by written notice amend a condition imposed under subclause (2)(b).
- (5) An amendment under subclause (4) is effective from the date specified in the notice.
- (6) If an authorised person approves an application, a written permit and any conditions applied is to be given to the applicant.
- (7) If an authorised person refuses to approve an application, written notice of that refusal and the reasons for the decision is to be given to the applicant.

### **6.3 Compliance with permit issued**

Where a permit is issued under clause 6.2, the applicant and the owner or occupier of the lot to which the permit relates, shall comply with the terms and any conditions of that permit.

### **6.4 Revocation of a permit**

An authorised person may revoke a permit if—

- (a) the owner or occupier requests an authorised person to do so;
- (b) the fence to which the permit relates has been demolished and is not rebuilt for a period of 6 months;
- (c) the circumstances have changed in such a way that a permit 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.

### **6.5 Duration of a permit**

- (1) Unless otherwise stated in the permit, a permit granted under this local law transfers with the lot to which it relates and is deemed to transfer to each successive owner or occupier of that lot.
- (2) Where a permit is transferred under subclause (1), the successive owner or occupier may apply to an authorised person for written confirmation of this transfer.
- (3) For the avoidance of doubt, a permit granted under this local law may be relied upon by any subsequent owner or occupier of the lot, and may be enforced against them by the local government.

### **6.6 False or misleading statement**

A person shall not make a false or misleading statement in connection with any application, requirement or request under this local law.

## PART 7—OBJECTIONS AND REVIEW

### 7.1 Objections and review

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 a permit;
- (b) impose or vary a condition of a permit; or
- (c) revoke a permit.

## PART 8—ENFORCEMENT

### 8.1 Notices of breach

(1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, an authorised person may give a notice of breach in writing to the owner or occupier of that lot.

(2) A notice of breach shall—

- (a) specify the provision of this local law that has been breached;
- (b) specify the particulars of the breach; and
- (c) state that the owner or occupier is required to remedy the breach within the time specified in the notice.

(3) An owner or occupier given a notice of breach shall comply with the terms of the notice and remedy the breach within the time specified in the notice.

(4) Should an owner or occupier fail to comply with a notice, an authorised person may enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of doing so from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.

(5) 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*.

(6) This local law is subject to sections 3.25 and 3.27 and Schedules 3.1 and 3.2 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, Subdivision 3 of the Act.

### 8.2 Offences and penalties

(1) A person who fails to do anything required or directed to be done under this local law, or who does anything that under this local law that person is prohibited from doing, commits an offence.

(2) 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 Prescribed offences

(1) An offence against a clause specified in Schedule 4 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 4.

### 8.4 Form of 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 in 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—Sufficient fence for residential lots

[Clause 2.2(a)]

1. On a residential or special residential lot, a sufficient fence is a dividing fence that—

- (a) is constructed of—
  - (i) corrugated fibre-reinforced pressed cement sheeting;
  - (ii) timber pickets or post and rail;
  - (iii) brick, stone or concrete;
  - (iv) factory coloured sheet metal post and panelled fence;
  - (v) metal post and rail; or
  - (vi) any combination of the materials described in paragraphs (i)-(v); and
- (b) in the case of a front fence—
  - (i) is not more than 1200mm in height; or

- (ii) is between 1200mm and 1800mm in height; and is visually permeable fence above 1200mm; and
  - (iii) if the fence is a side boundary fence that uniformly slopes down from not more than 1800mm to no more than 1200mm in height over a maximum distance of 1500mm from the start of the front set back area from the building to the front of the lot;
  - (c) in the case of any other dividing fence, the fence is between 1750mm and 1850mm in height, and to which an extension of lattice or other permeable material as agreed between the owner or occupiers of adjoining properties parties may be added so that the total height of the fence is a maximum of 2100mm.
2. The fence shall not adversely affect land or 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.

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**Schedule 2—Sufficient fence for commercial or industrial lots**

[Clause 2.2(b)]

1. On a commercial or industrial lot, a sufficient fence is a dividing fence that—
- (a) is constructed of—
    - (i) galvanised or PVC coated link mesh, that is no higher than 2000mm unless it is topped with up to 3 strands of plain or barbed wire;
    - (ii) fibre reinforced cement sheets;
    - (iii) painted or galvanized steel or aluminium sheeting;
    - (iv) factory coloured sheet metal post and panelled fence;
    - (v) timber, brick, stone or concrete; or
    - (vi) any combination of the materials described in paragraphs (i)-(v); and
  - (b) in the case of a front fence—
    - (i) is not more than 1200mm in height; or
    - (ii) is more than 1200mm but not higher than 2000mm unless topped with up to 3 strands of plain or barbed wire to not more than 2400mm in height; and is visually permeable above 1200mm; and
    - (iii) if the fence is a side boundary fence that uniformly slopes down from no more than 2000mm to no more than 1200mm in height over a maximum distance of 1500mm from the start of the front set back area from the building to the front of the lot; and
  - (c) in the case of any other dividing fence, the fence is no more than 2400mm in height, including not more than three strands of plain or barbed wire.
2. Upon application, an authorised person may issue a permit varying clause 1(b), and may impose conditions.
3. Fences constructed in accordance with Schedule 1.
4. The fence shall not adversely affect land or 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.

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**Schedule 3—Sufficient fence for rural lots**

[Clause 2.2(c)]

1. On a rural lot, a sufficient fence is a dividing fence that is at least 1200mm in height so as to prevent stock passing through and—
- (a) in all the case of a non-electrified fence is of—
    - (i) post and wire construction with at least five wires, with the lower wires spaced closer together than the higher wires and each wire connected to posts in all cases; or
    - (ii) post and rail construction, with at least three rails connected to posts in all cases; and
  - (b) in the case of an electrified fence, constructed in accordance with clause 5.2(2).
2. The fence shall not adversely affect land or 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.

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**Schedule 4—Prescribed offences**

[Clause 8.3(1)]



Item	Clause	Nature of offence	Modified penalty \$
1	2.1	Construction or alteration of a dividing fence on a lot that is not a sufficient fence without a permit	200
2	3.1	Construction of a non-compliant fence within front setback area without a permit	200
3	3.2	Construction or maintenance of a non-compliant fence in a secondary setback area without a permit	200
4	3.3	Construction of a non-compliant fence, wall or other structure at a vehicle access point	200
5	3.4	Obstruction of a watercourse	200
6	3.5	Construction of a gate or fence encroaching over other land	200
7	3.6	Construction of a retaining wall more than 500mm in height without a building permit	500
8	3.7	Construction of a masonry wall or fence more than 750mm in height without a building permit	200
9	3.8(1)	Alteration of natural ground levels without a permit	500
10	3.8(2)	Construction of a corrugated fibre-reinforced pressed cement fence with more than 150m difference in ground levels on each side	200
11	3.8(3)	Construction of a fence or retaining wall more than 500mm in height within 1000mm of a boundary without written consent of adjoining owners	200
12	3.9(1)	Failure to maintain fence in good condition	200
13	3.10	Construction or maintenance of a fence across right-of-way etc. without approval	500
14	4.1	Use of prohibited materials in a fence	500
15	4.2(1)	Use of pre-used fencing materials without a permit	200
16	5.1(1)	Using or allowing to remain barbed wire on residential lots	200
17	5.1(2)	Non-compliant use of barbed wire on a rural lot	200
18	5.1(3)	Non-compliant use of barbed wire on a commercial or industrial lot	500
19	5.2(1)	Construction of an electric fence without a permit	500
20	5.3(1)	Construction of a razor wire fence without a permit	500
21	6.3	Failure to comply with conditions of a permit for fence	500
22	6.6	Making a false or misleading statement	500
23	8.1(3)	Failure to comply with notice of breach in relation to Part 5—Restricted Fencing	500
24	8.1(3)	Failure to comply with notice of breach in relation to all matters other than Part 5—Restricted Fencing	200
25	8.2(1)	Other offences not specified	200

Dated this 21 October 2021

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

N. MORRELL, President.  
I. FITZGERALD, Acting Chief Executive Officer.