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DIVIDING FENCES ACT 1961

CITY OF COCKBURN

FENCING LOCAL LAW 2012

DIVIDING FENCES ACT 1961

LOCAL GOVERNMENT ACT 1995

CITY OF COCKBURN

FENCING LOCAL LAW 2012

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DIVIDING FENCES ACT 1961

LOCAL GOVERNMENT ACT 1995

CITY OF COCKBURN

FENCING LOCAL LAW 2012

Under the powers conferred by the *Dividing Fences Act 1961*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Cockburn resolved on 14 June 2012 to make the following local law.

PART 1 — PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Cockburn Fencing Local Law 2012*.

1.2 Commencement

This local law will commence 14 days after the publication in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

Part IV—BUILDINGS and associated reference to Part IV in Schedule 2 in the City of Cockburn (Local Government act) Local Law 2011 published in the *Government Gazette* of 10 December 2010 is repealed.

1.5 Definitions and interpretation

(1) In this local law—

Act means the *Local Government Act 1995*;

AS means an Australian Standard or Australian/New Zealand Standard published by Standards Australia;

AS/NZS 3016-2002 means “Electrical installations—Electric security fences” published by the Standards Australia and Standards New Zealand;

authorised person means a person appointed by the local government under section 9.10(1) of the Act to enforce this local law;

boundary fence means a fence, other than a dividing 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 a common boundary;

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 other than a fence in respect of which a licence under Part 4 of this local law has been issued and is current;
- (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 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;

Dividing Fences Act means the *Dividing Fences Act 1961*;

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

electrified fence permit means a permit, in the form of Schedule 4, to have and use an electrified fence on the lot to which the licence applies;

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

frontage means the boundary line between a lot and the thoroughfare on which that lot abuts;

height in relation to a fence means the vertical distance between—

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

industrial lot means a lot where an industrial use—

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

permit means an electrified fence permit or a razor wire fence permit;

local government means the City of Cockburn;

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

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

notice of breach means a notice referred to in clause 5.1(2);

owner has the meaning given to it in the Act;

razor wire fence permit means a permit, in the form of Schedule 5, to construct a fence wholly or partly of razor wire on the lot to which the permit applies;

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 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;

rural lot means a lot where a rural 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;

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

rural living lot means a lot where residential use may be permitted under a local planning scheme;

sufficient fence means a fence described in clause 2.2.

PART 2 — SUFFICIENT FENCES

2.1 Only sufficient fences to be constructed

- (1) A person must not construct a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Subclause (1) does not apply in respect of a dividing fence if all the owners of land adjoining the land on which the dividing fence is to be constructed agree on the kind of dividing fence that is to be constructed.
- (3) Subclause (1) does not apply in respect of a boundary fence if all the owners of land adjoining the land on which the boundary fence is to be constructed agree on the kind of boundary fence that is to be constructed.

2.2 Meaning of “sufficient fence”

- (1) Subject to subclause (2), (3) and (4) a dividing fence is a sufficient fence if it is constructed on or near the boundary between—
 - (a) a residential lot and an industrial lot and is constructed and maintained in accordance with the specifications in Schedule 1;
 - (b) a residential lot and a commercial lot and is constructed and maintained in accordance with the specifications in Schedule 1;
 - (c) a residential lot and a rural lot and is constructed and maintained in accordance with the specifications in Schedule 1;
 - (d) a residential lot and a rural living lot and is constructed and maintained in accordance with the specifications in Schedule 1; and
 - (e) a rural living lot and a rural lot and is constructed and maintained in accordance with the specifications in Schedule 3.
- (2) If subclause (1) does not apply, a dividing fence or a boundary fence is a sufficient fence if the dividing fence or the boundary fence is—
 - (a) on a residential lot and is constructed and maintained in accordance with the specifications in the Schedule 1;

- (b) on a commercial lot or an industrial lot and is constructed and maintained in accordance with the specifications in Schedule 2; or
- (c) on a rural lot or on a rural living lot and is constructed and maintained in accordance with the specifications in Schedule 3.

(3) Notwithstanding subclauses (1) and (2), a dividing fence or a boundary fence is a sufficient fence if it is determined by the local government to be a sufficient fence.

(4) In considering whether to determine that a dividing fence or a boundary fence is a sufficient fence even though it does not comply with subclauses (1) or (2), the local government may take into account whether the construction of the fence would have an adverse effect on—

- (a) the safe or convenient use of any land; or
- (b) the safety or convenience of any person.

2.3 Other requirements

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 licence or permit is required for that fence.

PART 3—FENCING MATERIALS AND MAINTENANCE

3.1 Fencing materials

(1) A person must not construct a fence on a residential lot, a commercial lot or an industrial lot except from—

- (a) the materials specified for a sufficient fence in respect of that lot in Schedule 1 or 2 (as the case may be); or
- (b) any other material approved in writing by the local government.

(2) If the local government approves the use of pre-used materials in the construction of a fence under subclause (1), that approval is to be conditional on the pre-used materials being painted or treated as directed by the local government.

3.2 Barbed wire and broken glass fences

(1) This clause does not apply to a fence constructed wholly or partly of razor wire.

(2) Unless with the prior written approval of the local government, an owner or occupier of a residential lot or a commercial lot must not, on that lot—

- (a) construct a dividing fence or a boundary fence that contains;
- (b) affix to a dividing fence or a boundary fence; or
- (c) allow to remain on a dividing fence or a boundary fence,

any barbed wire or other material with spiked or jagged projections.

(3) An owner or occupier of an industrial lot must not—

- (a) construct a dividing fence or a boundary fence that contains;
- (b) affix to a dividing fence or a boundary fence; or
- (c) allow to remain on a dividing fence or a boundary fence,

any barbed wire or other materials with spiked or jagged projections unless—

- (d) the barbed wire or materials are carried on posts at an angle of 45 degrees; and
- (e) the bottom row of barbed wire or other materials is set back at least 150mm from the face of the fence and is not nearer than 2000mm from the ground level.

(4) If the posts which carry the barbed wire or other materials referred to in subclause (3) are angled towards the outside of the lot bounded by the fence the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.

(5) An owner or occupier of a rural lot must not—

- (a) place or affix barbed wire; or
- (b) allow barbed wire to remain,

on 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.

(6) An owner or occupier of a lot must not—

- (a) affix any broken glass to; or
- (b) allow any broken glass to remain on or as part of,

any fence or wall, whether internal or external, on that lot.

3.3 Maintenance of fences

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

PART 4—ELECTRIFIED AND RAZOR WIRE FENCES

4.1 Requirements for a permit

- (1) An owner or occupier of a lot, other than a rural lot, must not—
 - (a) have or use an electrified fence on that lot—
 - (i) without first obtaining an electrified fence permit; and
 - (ii) except in accordance with that permit; and
 - (iii) unless the fence complies with AS/NZS 3016:1994.
 - (b) construct a fence wholly or partly of razor wire on that lot—
 - (i) without first obtaining a razor wire fence permit; and
 - (ii) except in accordance with that permit.
- (2) An electrified fence permit, in respect of a lot, cannot be issued—
 - (a) if the lot is, or 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, if any, on the lot.
- (3) A razor wire fence permit cannot be issued in respect of a lot—
 - (a) if the lot is, or abuts, a residential lot;
 - (b) if the fence is within 3m of any 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.

4.2 Application for a permit

- (1) An owner or occupier of land may apply to the local government for an electrified fence licence or a razor wire fence permit.
- (2) An application for a permit must—
 - (a) be in the form determined by the local government;
 - (b) include—
 - (i) a written consent signed by the owner of the land on which the proposed fence is to be located—unless the applicant is the owner of that land; and
 - (ii) any further information which may be required by the local government; and
 - (c) be accompanied by any fee imposed and determined by the local government under sections 6.16—6.19 of the Act.

4.3 Determining an application

- (1) The local government may refuse to consider an application that does not comply with clause 4.2(2).
- (2) The local government may—
 - (a) approve an application, subject to any conditions that it considers to be appropriate; or
 - (b) refuse an application.
- (3) If the local government approves an application, it is to issue a permit in the form of—
 - (a) Schedule 4, where the application is made for an electric fence permit; or
 - (b) Schedule 5, where the application is made for a razor wire fence permit.
- (4) The local government may vary a condition to which a permit is subject by giving written notice to the permit holder and the varied condition takes effect 7 days after that notice is given.

4.4 Transfer of a permit

- (1) A permit referred to in clause 4.3(3) will transfer with the land to any new occupier or owner of the lot, except where the permit has been cancelled under clause 4.5.

4.5 Cancellation of a permit

The local government may cancel a permit if—

- (a) the permit holder requests the local government to do so;
- (b) the fence to which the permit applies has been demolished and not rebuilt for a period of 6 months;
- (c) the circumstances are such that a permit could not be issued under clause 4.1(2) or (3); or
- (d) the licensee fails to comply with a condition of the permit or breaches a provision of this local law in respect of the fence;
- (e) the permit holder fails to comply with a notice issued for a fence relevant to a permit under clause 4.3(3).

4.6 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 a permit;
- (b) impose or vary a permit condition;
- (c) cancel a permit; or
- (d) give a person a notice under clause 5.1.

PART 5 — ENFORCEMENT

5.1 Notices of breach

(1) The local government's powers to give notices, and take action in respect of notices, are contained in the *Local Government Act 1995*.

(2) If, in the opinion of the local government, a person has breached a provision of this local law, the local government may give to that person a written notice requiring him or her to remedy that breach before the date specified in the notice.

(3) If an owner or occupier fails to comply with a notice issued pursuant to clause 5.1(2) the local government may undertake or cause to be undertaken that work.

(4) Where the local government undertakes or causes to be undertaken any work or carries out or causes to be carried out any conditions, it may cause to be given to the owner or occupier of the land or premises written notice of the amount expended by the local government in carrying out the work.

(5) The amount specified in the notice referred to in subclause (4) must be paid to the local government within 14 days of the service of the notice and if the amount specified is not paid within the prescribed time from the service of the notice, the local government may recover it, as well as the costs of proceeding, and interest thereon, in a Court of competent jurisdiction.

5.2 Offences

(1) A person who fails to comply with a notice under clause 5.1, or contravenes any provision of this local law commits an offence.

(2) A person who commits an offence under this local law is liable, on conviction to a penalty not exceeding \$5000 and, if the offence is of a continuing nature, an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

5.3 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 \$150.

Schedule 1

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

Each of the following is a "sufficient fence" on a residential lot—

- (a) a fully enclosed timber fence built to manufacturer's specifications or in accordance with established construction techniques, the height of the fence to be 1800mm except with respect to the front setback area for which there is no minimum height but which is subject to clause 2.2(1);
- (b) a fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which otherwise satisfies the following specifications—
 - (i) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;
 - (ii) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
 - (iii) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturers written instructions; and
 - (iv) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 2.2(1);

Schedule 2

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

Each of the following is a "sufficient fence" on a commercial lot or an industrial lot—

- (a) a fence constructed of PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—
 - (i) corner posts to be minimum 50mm normal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
 - (ii) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
 - (iii) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post and with footings 225mm x 600mm;

- (iv) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together or single 4mm wire;
 - (v) rail-less link, chain or steel mesh is to be to a height of 2000mm on top of which are to be 3 strands of barbed wire carrying the fence to a height of 2400mm in accordance with clause 3.2(3) of this local law; and
 - (vi) galvanised link mesh wire to be 2000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6m and shall be constructed of 25mm tubular framework with 1 horizontal and 1 vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment;
- (b) a fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Item (b) of Schedule 1;
 - (c) 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 1800mm but no greater than 2400mm; or
 - (d) a fence of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 1.

Schedule 3

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT

Each of the following is a "sufficient fence" on a rural lot—

- (a) a non-electrified fence that is a fence of posts and wire construction and satisfies the following specifications—
 - (i) wire is to be high tensile wire and not less than 2.5mm;
 - (ii) minimum of 5 wires are 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.
 - (iii) posts are to be of indigenous timber or other suitable material including—
 - (A) timber impregnated with a termite and fungicidal preservative;
 - (B) standard iron star pickets; or
 - (C) concrete;
 - (iv) posts are to be placed at not more than 10m intervals, set minimum 600mm in the ground and 1200mm above the ground;
 - (v) if timber posts are used, posts are to be cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn; and
 - (vi) if strainer posts are to be not less than 2250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000mm in the ground and set at all corners, gateways and fence line angles but not exceeding 200m apart; or
- (b) An electrified fence having 4 wires is a sufficient fence that is constructed generally in accordance with (a).

Schedule 4

ELECTRIFIED FENCE PERMIT

This is to certify that
 of
 has a permit, subject to the conditions set out below, to have and use an electrified fence on.....

 (address)
 from 20

.....
 Authorised Person
 City of Cockburn

Conditions of Permit

The holder of the permit must—

- (a) display the permit in a prominent position on the land or premises on which the electrified fence has been constructed;

- (b) upon the request of an authorised person produce to him or her this permit;
- (c) obtain the written consent of the local government prior to the commencement of any alteration, addition or other work relating to or affecting the electrified fence;
- (d) comply with AS/NZS 3016:2002; and
- (e) following construction of the fence, lodge with Western Power a certificate of installation from a qualified electrician and comply with any requirements of Western Power regarding the construction of the fence.

.....

**Schedule 5
 RAZOR WIRE FENCE PERMIT**

This is to certify that
 of
 has a permit , subject to the conditions set out below, to have a fence constructed wholly or partially
 of razor wire on

 (address)
 from 20

.....
 Authorised Person
 City of Cockburn

Conditions of permit

The holder of the licence must—

- (a) display this licence in a prominent position on the land or premises on which the fence has been constructed;
- (b) on the request of an authorised person, produce to him or her this permit;
- (c) obtain the written consent of the Local government prior to the commencement of any alteration, addition or other work relating to or affecting the fence.

.....

Dated: 18 June 2012.

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

L. HOWLETT, Mayor.
 S. CAIN, Chief Executive Officer.
