
CITY OF KARRATHA

FENCING LOCAL LAW 20187

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Fencing Local Law 201~~8~~7

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LOCAL GOVERNMENT ACT 1995

CITY OF KARRATHA

FENCING LOCAL LAW 201~~7~~⁸

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the City of Karratha resolved to make the following local law on INSERT DATE.

PART 1 - PRELIMINARY

1. Citation

This local law may be cited as the *City of Karratha Fencing Local Law 201~~7~~⁸*.

2. Commencement

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

3. Application

This local law applies throughout the district.

4. Repeal

The *Shire of Roebourne Local Laws Relating to Fencing* published in the *Government Gazette* on 29 August 2003, and as amended in the *Government Gazette* on 23 March 2004 are repealed.

5. Interpretation

In ~~these~~ this local law~~s~~, unless the context requires otherwise -

Act means the *Dividing Fences Act 1961*;

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

AS/NZS 1170.2-2011 means the standard published by Standards Australia as AS/NZS 1170.2-2011: Structural design actions – Wind actions, as amended from time to time;

AS/NZS 3016-2002 means the standard published by Standards Australia as AS/NZS 3016-2002: Electrical Installations—Electric Security Fences, as amended from time to time;

boundary fence has the meaning given to it for the purposes of the Act;

building approval means an approval issued by a Permit Authority as per the provisions of the *Building Act 2011*.

Building Surveyor means a building service practitioner, as defined in the *Building Services (Registration) Act 2011* section 3, who is registered in a class of building service practitioner that is prescribed for the purposes of this definition;

CEO means the Chief Executive Officer of the local government;

Commercial Lot means a lot where a commercial use -

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

dangerous in relation to any fence means:

- (a) an electrified fence other than a fence in respect of which a permit under Part 5 of ~~these~~ this local laws has been issued and is current;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with ~~these~~ this local laws;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

district means the district of the local government;

dividing fence has the meaning given to it in and for the purposes of the Act;

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

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

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

local government means the City of Karratha;

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

notice of breach means a notice referred to in clause 13(1);

Permit Authority has the meaning given to it in and for the purposes of the *Building Act 2011*;

Residential Lot means a lot where a residential use -

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

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

Rural Lot means a lot where a rural use -

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

Schedule means a Schedule to this local law;

Rural Residential Lot means a lot where a special rural use -

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

sufficient fence means a fence described in clause 5; and

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

6. Approval Fees & Charges

- (1) ~~An~~ owner or occupier of a lot shall not erect, construct or repair a fence without applying for and obtaining a building approval from the local government or Permit Authority.
- (2) Application fees set by the *Building Regulations 2012* as governed by the *Building Act 2011* will be applied to applications made under this local law.
- (3) Where planning approval is required, the fees and charges are to be determined in accordance with the *Planning and Development Act 2005* and the associated regulations.

PART 2 - SUFFICIENT FENCES

7. Sufficient Fences

- (1) Unless by agreement between the owners of adjoining properties, a person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
 - (2) Subject to subclauses (3) and (4), a sufficient fence -
 - (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of ~~Schedule 1~~;
 - (b) 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 2, taking into consideration provisions of any local planning policies adopted by Council; and
 - (c) on a Rural Lot and on a Rural Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.
 - (3) Where a fence is erected on or near the boundary between -
 - (a) a 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) a Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of t Schedule 2, taking into consideration provisions of any local planning policies adopted by Council;
 - (c) a 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 3; and
 - (d) a Rural 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 3.
 - (4) Unless the Building Surveyor specifies otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (3) is a dividing fence constructed in accordance with the specifications and requirements of ~~the Second~~ Schedule 2.
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PART 3 - GENERAL

8. Maintenance of Fences

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

9. General Discretion of the Local Government

(1) Notwithstanding clause 7, the local government may consent to the erection or repair of a fence which does not comply with the requirements of ~~these~~this local laws.

(2) In determining whether to grant its consent to the erection or repair of any fence, the local government may consider, in addition to any other matter that it is authorized to consider, whether the erection or retention of the fence would have an adverse effect on -

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

PART 4 - FENCING MATERIALS

10. Fencing Materials

(1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only brick, stone, concrete, wrought iron, tubular steel framed, link mesh, timber, plastic coated or galvanised link mesh, colour bonded metal or a material approved by the Building Surveyor.

(2) Where the Building Surveyor approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant painting or treating the pre-used material as directed by the Building Surveyor.

(3) Where required by the Building Surveyor Fencing designs are to be certified by a practicing structural engineer as being suitable for wind loadings found in Region D Importance Level 2 areas in accordance with AS1170.2-2011.

11. Barbed Wire and Broken Glass Fences

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

(2) An owner or occupier of a Commercial Lot shall not erect or affix to any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the prior written approval of the Building Surveyor has been obtained.

(3) An owner or occupier of an 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 at an angle of 45 degrees, and unless the bottom row of wire or other materials is set back 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 lot shall not affix or allow to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.

(6) 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.

PART 5 - ELECTRIFIED AND RAZOR WIRE FENCES

12. Requirements for a building approval

- (1) An owner or occupier of a lot, other than a Rural Lot, shall not -
- (a) erect or construct an electrified fence on that lot without first obtaining a building approval under subclause (2); or
 - (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a building approval under subclause (3).
- (2) A building approval to have and use an electrified fence shall not be issued -
- (a) in respect of a lot which is or which abuts a Residential Lot;
 - (b) unless the fence complies with AS/NZS 3016-2002; 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) A building approval to have a fence constructed wholly or partly of razor wire shall not be issued:
- (a) in respect of a lot which is or which abuts a Residential Lot;
 - (b) if the proposed fence is within 3m of the boundary of the lot; or
 - (c) where any razor wire is proposed to be used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.
- (4) An application for a building approval referred to in subclauses (2) or (3) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.
- (5) An application for a building approval referred to in subclauses (2) or (3) may be -
- (a) approved by the local government or ~~other~~ Permit Authority;
 - (b) approved by the local government or ~~other~~ Permit Authority subject to such conditions as it thinks fit; or
 - (c) refused by the local government or ~~other~~ Permit Authority.

PART 6 - NOTICES OF BREACH

13. Notices of Breach

- (1) Where a breach of any provision of ~~these~~~~this~~ local laws 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 ('notice of breach').
- (2) A notice of breach shall -
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-
- (a) specify the provision of ~~these~~this local laws which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.

(3) Should an owner or occupier fail to comply with a notice of breach, the local government may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.

(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 power of entry exercised by the local government under this local law is subject to Part 3, Division 3 of the *Local Government Act 1995*.

PART 7 - OFFENCES

14. Offences and Penalties

(1) An owner or occupier who fails to comply with a notice of breach commits an offence and is liable upon conviction to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

(2) A person who fails to comply with or who contravenes any provision of ~~these~~this local laws commits an offence and is liable to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

15. Modified Penalties

(1) An offence against any provision of ~~these~~this local laws 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 these Local Laws is \$100.

16. Form of Notices

For the purposes of ~~these~~this local laws –

- (a) the form of the infringement notice referred to in section 9.17 of the *Local Government Act 1995* is to be in or substantially in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
- (b) the form of the notice referred to in section 9.20 of the *Local Government Act 1995* is to be in or substantially in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 8 - OBJECTIONS AND APPEALS

17. Objections and appeals

Any decision made by the local government under this local law is subject to the provisions of Part 9, Division 1 of the *Local Government Act 1995*.

SCHEDULE 1 – Specifications for a Sufficient Fence on a Residential Lot

[Clause 7(2)(a)]

The following is a “sufficient fence” on a Residential Lot -

- A. A fence constructed of materials specified in Clause 10, with the exclusion of any form of mesh and which satisfies the following:
 - (a) the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Importance Level 2 areas in accordance with AS1170.2-2011;
 - (b) The height of the fence to be 1800mm except with respect to the front set back area which is subject to the provisions of State Planning Policy 3.1-Residential Design Codes.
- B. Fencing which does not meet the provisions of this local law, but was installed and compliant as per the provisions of the repealed local law will be considered a sufficient fence provided that it is maintained in good order.

SCHEDULE 2 – Specifications for a Sufficient Fence on a Commercial Lot and an Industrial Lot
Lot
[Clause 7(2)(b)]

Each of the following is a “sufficient fence” on a Commercial Lot and an Industrial Lot -

- A. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications:
- (a) the fence design being certified by a structural engineer (or manufacturer) as being suitable for wind loadings found in a Region D Importance Level 2 area in accordance with AS1170.2-2011;
 - (b) rail-less link, chain or steel mesh is to be to a height of 1800mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm in accordance with clause 11 (3) of ~~these~~this local law~~s~~;
 - (c) galvanised link mesh wire to be 2000mm in height~~;~~;
 - ~~(c)~~(d) Vehicle entry gates shall provide an opening of not less than 3.6m. Gates shall be fixed with a drop bolt and locking attachment.
- B. A fence of a material identified in Clause 10 constructed to the minimum specifications referred to in Schedule 1.
- C. Fencing which does not meet the provisions of this local law, but was installed and compliant as per the provisions of the repealed local law will be considered a sufficient fence provided that it is maintained in good order.
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[Clause 7(2)(c)]

A. In the case of a non-electrified fence, a sufficient fence on a Rural Lot or Rural Residential Lot is a fence of posts and wire construction, the minimum specifications for which are -

- Dated this day of 20178.

P LONG, MAYOR

C ADAMS, CHIEF EXECUTIVE OFFICER