

**LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961**

SHIRE OF KENT

FENCING LOCAL LAW 2011

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LOCAL GOVERNMENT ACT 1995
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Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it the Council of the Shire of Kent resolved on 18 May 2011 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Kent Fencing Local Law 2011*.

1.2 Application

This local law applies throughout the district.

1.3 Definitions

In this local law, unless the context requires otherwise:

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

“AS” means an Australian Standard published by the Standards Association of Australia;

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

“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 licence under Part 5 of this local law has been issued and is current;
- (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” 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;

“frontage” means the boundary line between a lot and the thoroughfare upon 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 the town planning scheme; and
- (b) is or will be the predominant use of the lot;

"local government" means the Shire of Kent;

"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 6.1(1);

"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;

"setback area" has the meaning given to it for the purposes of the town planning scheme;

"Special Rural 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 2.1; and

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

1.4 Repeal

The following local laws are repealed –

The former *Shire of Kent Local Laws Relating to Fencing 1998* as published in the *Government Gazette* on 2 September 1998.

1.5 Licence Fees & Charges

All licence fees and charges applicable under this local law shall be as determined by the local government from time to time in accordance with section 6.16 and 6.19 of the *Local Government Act 1995*.

PART 2 - SUFFICIENT FENCES

2.1 Sufficient Fences

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence unless all owners of land which adjoins the relevant boundary agree to erect a fence which though different does not fail to comply with the requirements of 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 the First Schedule.
 - (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 the Second Schedule;
 - (c) 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 the Third Schedule;
- (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 the First Schedule;
 - (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 the Second Schedule;
 - (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 the Third Schedule;
 - (d) a 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 the First Schedule; and
 - (e) a 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 the Third Schedule.
- (4) Unless the local government 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.
- (5) Notwithstanding any other provisions in this local law, a fence constructed of stone or concrete shall be a sufficient fence only if it is designed by a structural engineer where:
 - (a) it is greater than 1800 millimetres in height; or

- (b) the local government so requires.

PART 3 - GENERAL

3.1 Fences Within Front Setback Areas

- (1) A person shall not, without the written consent of the local government, erect a free-standing fence greater than 1200 millimetres in height, within the front set-back area of a Residential Lot within the district.
- (2) The local government may approve the erection of a fence of a height greater than 1200 millimetres in the front setback area of a Residential Lot only if the fence on each side of the driveway into the Lot across the front boundary is to be angled into the Lot for a distance of not less than 1500 millimetres along the frontage to a distance of not less than 1500 millimetres from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.
- (3) The provision of subclause (2) shall not apply to a fence:
 - (a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
 - (b) that does not adjoin a footpath.

3.2 Fences on a Rural Lot

A person shall not without the written consent of the local government, erect a fence on a Rural Lot, within 7.5 metres of a thoroughfare of a height exceeding 1500 millimetres.

3.3 Maintenance of Fences

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

3.4 General Discretion of the Local Government

- (1) Notwithstanding clause 2.1, the local government may consent to the erection or repair of a fence which does not comply with the requirements of this local law.
- (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

4.1 Fencing Materials

- (1) A person shall construct any fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only those materials specified for a sufficient fence in respect of such lot in the First or Second Schedule or some other material approved by the local government.
- (2) Where the local government approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant for approval painting or treating the pre-used material as directed by the local government.

4.2 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 Residential Lot or 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 local government 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 150 millimetres from the face of the fence and is not nearer than 2000 millimetres 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

5.1 Requirements for a Licence

- (1) An owner or occupier of a lot, other than a Rural Lot, shall not:
 - (a) have and use an electrified fence on that lot without first obtaining a licence under subclause (2); or
 - (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under subclause (3).
- (2) A licence 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 3016:1994; 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 where it is erected.
- (3) A licence to have a fence constructed wholly or partly of razor wire shall not be issued:
- (a) if the fence is within 3 metres of the boundary of the lot;
 - (b) where any razor wire used in the construction of the fence is less than 2000 millimetres or more than 2400 millimetres above the ground level.
- (4) An application for a licence 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 licence referred to in subclauses (2) or (3) may be:
- (a) approved by the local government;
 - (b) approved by the local government subject to such conditions as it thinks fit; or
 - (c) refused by the local government.

5.2 Transfer of a Licence

A licence referred to in clause 5.1 shall transfer with the land to any new occupier or owner of the lot.

5.3 Cancellation of a Licence

Subject to Division 1 Part 9 of the *Local Government Act 1995*, the local government may cancel a licence issued under this Part if –

- (a) the fence no longer satisfies the requirements specified in clause 5.1(2) or 5.1(3) as the case may be; or
- (b) the licence holder breaches any condition upon which the licence has been issued.

PART 6 - NOTICES OF BREACH

6.1 Notices of Breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot ('notice of breach').
- (2) A notice of breach shall:
 - (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 of the lot is required to remedy the breach within 28 days from the giving of the notice.
- (3) Should an owner 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 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 entry onto land will be in accordance with Part 3 Division 3 Subdivision 3 of that Act.

PART 7 - OFFENCES

7.1 Offences and Penalties

- (1) An owner 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 this local law 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.

7.2 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 \$125.

7.3 Form of Notices

For the purposes of this local law –

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

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FIRST SCHEDULE

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 1800 millimetres except with respect to the front setback area for which there is no minimum height but which is subject to clause 3.1.
- B. A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting erected to manufacturer's specifications or which otherwise satisfies the following specifications:
 - (a) 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 600 millimetres;
 - (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
 - (c) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturers written instructions; and
 - (d) the height of the fence to be 1800 millimetres except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.
- C. A fence constructed of brick, stone or concrete, which satisfies the following specifications:
 - (a) footings of minimum 225 millimetres x 150 millimetres concrete 15MPA or 300 millimetres x 175 millimetres brick laid in cement mortar;
 - (b) fences to be offset a minimum of 200 millimetres at maximum 3000 millimetres centres or 225 millimetres x 100 millimetres engaged piers to be provided at maximum 3000 millimetres centres;
 - (c) expansion joints in accordance with the manufacturer's written instructions; and
 - (d) the height of the fence to be 1800 millimetres except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.
- D. A composite fence having a minimum overall height of 1800 millimetres except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1, which satisfies the following specifications for the brick construction:
 - (1)
 - (a) brick piers of minimum 345 millimetres x 345 millimetres at 1800 millimetres centres bonded to a minimum height base wall of 514 millimetres;
 - (b) each pier shall be reinforced with one R10 galvanised starting rod 1500 millimetres high with a 250 millimetres horizontal leg bedded into a 500 millimetres x 200 millimetres concrete footing and set 65 millimetres above the base of the footing. The top of the footing shall be 1 course (85 millimetres) below ground level;
 - (c) the minimum ultimate strength of brickwork shall be 20MPA. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;

- (d) the ground under the footings is to be compacted to 6 blows per 300 millimetres and checked with a standard falling weight penetrometer; and
 - (e) control joints in brickwork shall be provided with double piers at a maximum of 6 metre centres; or
- (2)
- (a) brick piers of a minimum 345 millimetres x 345 millimetres x 2700 millimetres centres bonded to the base wall; and
 - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified;

Clause 2.1(2)(b)

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SECOND SCHEDULE

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

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) corner posts to be minimum 50 millimetres normal bore x 3.5 millimetres and with footings of a 225 millimetres diameter x 900 millimetres;
 - (b) intermediate posts to be minimum 37 millimetres nominal bore x 3.15 millimetres at maximum 3.5m centres and with footings of a 225 millimetres diameter x 600 millimetres;
 - (c) struts to be minimum 30 millimetres nominal bore x 3.15 millimetres fitted at each gate and two at each corner post and with footings 225 millimetres x 600 millimetres;
 - (d) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15 millimetres wires twisted together or single 4 millimetres wire;
 - (e) rail-less link, chain or steel mesh is to be to a height of 2000 millimetres on top of which are to be three strands of barbed wire carrying the fence to a height of 2400 millimetres in accordance with clause 4.2(3) of this local law; and
 - (f) galvanised link mesh wire to be 2000 millimetres in height and constructed of 50 millimetres mesh 2.5 millimetres 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 3.6 metres and shall be constructed of 25 millimetres tubular framework with one horizontal and one vertical stay constructed of 20 millimetres piping and shall be covered with 50 millimetres x 2.5 millimetres 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 the First Schedule.
- 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 1800 millimetres but no greater than 2400 millimetres.
- D. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in the First Schedule.

Clause 2.1(2)(c)

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THIRD SCHEDULE

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT

- (1) In the case of a non-electrified fence, a sufficient fence on a Rural Lot is a fence of posts and wire construction, the minimum specifications for which are:
- (a) wire shall be high tensile wire and not less than 2.5 millimetres. A minimum of five 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.
 - (b) posts shall be of indigenous timber or other suitable material including –
 - timber impregnated with a termite and fungicidal preservative;
 - standard iron star pickets; or
 - concrete;
 - (c) if timber posts are used, posts are to be cut not less than 1800 millimetres long x 50 millimetres diameter at small end if round or 125 millimetres x 60 millimetres if split or sawn. Posts to be placed at not more than 10 metre intervals, set minimum 600 millimetres in the ground and 1200 millimetres above the ground; and
 - (d) strainer posts, if timber, shall be not less than 2250 millimetres long and 150 millimetres diameter at the small end (tubular steel to be 50 millimetres in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000 millimetres in the ground and set at all corners, gateways and fence line angles but not exceeding 200 metres apart.
- (2) An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with (1).

Dated 2011

The Common Seal of the Shire of Kent was affixed by authority of a resolution of the Council in the presence of:

CATHERINE CROSBY
President

PETER BENTLEY
Chief Executive Officer