

LOCAL GOVERNMENT ACT 1995

DIVIDING FENCES ACT 1961

SHIRE OF EXMOUTH

FENCING LOCAL LAW 2015

Adopted 27 August 2015; Gazetted 11 September 2015

SHIRE OF EXMOUTH
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**LOCAL GOVERNMENT ACT 1995
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SHIRE OF EXMOUTH

FENCING LOCAL LAW 2015

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Exmouth resolved on 27 August 2015 to adopt the following local law.

Part 1—Preliminary

1.1 Citation

This local law may be cited as the *Shire of Exmouth Fencing Local Law 2015*.

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The *Shire of Exmouth Local Law Relating to Fencing* published in the *Government Gazette* on 23 October 1998 is repealed.

1.4 Application

This local law applies throughout the district.

1.5 Interpretation

In this local law, unless the context requires otherwise—

Act means the *Local Government Act 1995*;

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

authorised person means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

boundary fence has the meaning given under the *Dividing Fences Act 1961*;

CEO means the Chief Executive Officer of the local government;

commercial lot means a lot where a commercial use is or may be permitted under the local planning scheme, and 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 approved by the local government under this local law;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

dangerous material means any material which results in a dangerous fence;

district means the district of the local government;

dividing fence has the meaning given under 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, irrespective of where it is located and includes any gate;

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

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;

industry lot means a lot where an industrial use is or may be permitted under the local planning scheme and is or will be the predominant use of the lot;

local government means the Shire of Exmouth;

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 and for the purposes of the *Planning and Development Act 2005*;

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

occupier has the meaning given to it in the Act;

owner has the meaning given to it in the Act;

public access way means a thoroughfare;

residential lot means a lot where a residential use is or may be permitted under the local planning scheme, and is or will be the predominant use of the lot;

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

right of way means a thoroughfare;

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;

sufficient fence means a fence that satisfies clause 2.1 and includes a fence of the description and quality agreed upon by the owners of adjoining lots which does not fail to satisfy clause 2.1;

thoroughfare has the meaning given to it in the Act; and

townsite has the meaning given to it in the *Land Administration Act 1997*.

1.6 Fees and charges

All fees and charges applicable under this local law shall be determined by the local government from time to time under and in accordance with sections 6.16 to 6.19 of the Act.

Division 1—Sufficient fences

2.1 Sufficient fences

- (1) A person shall not erect a dividing fence or a boundary or dividing fence that is not a sufficient fence.
- (2) Pursuant to section 24 of the *Dividing Fences Act 1961* and subject to subclauses (3) and (4) of this local law, 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 2;
 - (b) on a commercial lot or industry lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3; and
 - (c) on a rural lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Schedule 4.
- (3) Where a fence is erected on or near the boundary between a residential lot and a commercial lot or industry lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 2.
- (4) Where a fence is erected on a boundary line between lands in differing lots, neither of which is a residential lot, the local government shall determine which Schedule shall apply for the purposes of prescribing a sufficient fence.
- (5) Notwithstanding any other provision in this local law, a dividing fence or boundary fence shall not exceed 1 800 millimetres in height unless the approval of the local government has been obtained to such a fence.

Division 2—General

2.2 Gates in fences

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

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

2.3 Retaining Walls

A person must not commence to erect or proceed with the erection of a retaining wall which is on the boundary line unless or until-

- (a) An application has been lodged with the local government including –
 - (i) two copies of a plan and specifications of the proposed retaining wall; and
 - (ii) in the case of a retaining wall exceeding 1 000mm in height and when required by the local government, engineering calculations in respect of the proposed retaining wall.
- (b) The local government has approved the application.

2.4 Maintenance of fences

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

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- (2) Where in the opinion of the local government or 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, the local government or an authorised person may give a notice of breach under clause 5.1 to the owner of the lot on which the fence is erected.

2.5 Fences across rights-of-way, public access ways or thoroughfares

A person must not, without the approval of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

2.6 General discretion of the local government

- (1) Notwithstanding the provisions of clause 2.1, the local government may approve the erection or repair of a dividing fence which is not a sufficient fence where all of the owners of the lots to be separated by the dividing fence make an application for approval for that purpose.
- (2) In determining whether to grant its approval under subclause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on—
- (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the locality.

Division 3—Fencing materials

2.7 Prohibited materials

A person must not erect a fence which is comprised, in whole or in part of:

- (a) second hand material within the townsite of Exmouth;
- (b) metal spikes, broken glass, razor wire, or any other dangerous material except to the extent provided for in Schedules 3 or 4 .

2.8 Pre-used fencing materials

- (1) Notwithstanding clause 2.1, a person shall not construct a fence on a residential lot, a commercial lot or an industrial lot from pre-used materials without the approval of 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 painting or treating the pre-used material as stated in or attached to the form of approval issued by the local government under clause 3.2.

Part 3—Approvals

3.1 Application for approval

- (1) Where a person is required to obtain the approval of the local government under this local law, that person shall apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law shall—

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- (a) be in the form determined by the local government;
 - (b) be signed by the applicant and the owner of the lot;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for approval.
 - (4) The local government may refuse to consider an application for approval which is not in accordance with subclauses (2) and (3).

3.2 Decision on application for approval

- (1) The local government may—
 - (a) approve an application for approval unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for approval.
- (2) If the local government approves an application for approval, it is to issue to the applicant an approval in the form determined by the local government.
- (3) If the local government refuses to approve an application for approval, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on an approval or which are to be taken to be imposed on an approval, the clause does not limit the power of the local government to impose other conditions on the approval under subclause (1)(a).

3.3 Compliance with approval

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

3.4 Duration of approval

Unless otherwise stated in the form of approval, an approval granted under this local law runs with the lot to which it relates and for the avoidance of doubt, it may be relied upon by any subsequent occupier or owner of the lot, and may be enforced against them by the local government.

Part 4—Miscellaneous

4.1 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 5—Notices of Breach

5.1 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—

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- (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner is required to remedy the breach within the time specified in the notice.
- (3) An owner given a notice of breach shall comply with the terms of the notice and remedy the breach within the time specified in the notice.

Part 6—Offences

6.1 Offences and penalties

- (1) A person who fails to comply with a notice of breach commits an offence and is liable upon conviction to a penalty of not less than \$250 and not exceeding \$5 000 and, if the offence is a continuing offence, to 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 on conviction to a penalty of not less than \$250 and not exceeding \$5 000 and, if the offence is a continuing offence, to a maximum daily penalty of \$500.

6.2 Modified penalties

- (1) An offence against any provision of this local law is a prescribed offence described for the purposes of section 9.16(1) of the Act.
- (2) The amount appearing in the final column of Schedule 1 directly opposite a prescribed offence in that Schedule is the modified penalty for that prescribed offence.

6.3 Form of notices

For the purposes of this local law—

- (1) the form of the infringement notice referred to in sections 9.16 and 9.17 of the Act is to be in the form of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (2) the form of the withdrawal of infringement/notice referred to in section 9.20 of the Act is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Part 7—Objections and review

7.1 Objections and review

When the local government makes a decision under clause 3.2, the provision of Part 9 Division 1 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* apply to that decision.

Schedule 1

Prescribed offences

[clause 6.2(2)]

OFFENCES AND MODIFIED PENALTIES

Item No	Clause	Nature of Offence	Modified Penalty (\$)
1	2.1(1)	Erect a fence which is not a sufficient fence	250
2	2.2(a)	Erect a gate in a fence not opening into the lot	250
3	2.2(b)	Erect a gate in a fence not sliding parallel and inside of fence	250
4	2.4(1)	Failure to maintain a fence in good condition to prevent fence becoming dangerous, dilapidated or unsightly	250
5	2.5	Erect or maintain a fence or obstruction of a temporary or permanent nature across a right of way, public access way or thoroughfare without approval	250
6	2.7(a)	Construct a dividing fence within the townsite from secondhand materials	250
7	2.7(b)	Erect a fence using barbed wire, glass or material with spiked or jagged projections in fence, or razor wire in fence construction	250
8	2.8	Construct a dividing fence from secondhand materials on a residential lot, a commercial lot or industrial lot without approval	
9	3.3	Failure to comply with conditions of approval	250
10	5.1(3)	Failure to comply with notice of breach	250

Schedule 2

Residential lot

[cl. 2.1(2)(a)]

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

A sufficient fence is a fence which comprises:

- a) link or chain mesh that is a minimum height of 1500mm;
 - b) a galvanised iron top and bottom rail; and
 - c) posts that are spaced 3 metres apart which are:
 - i. galvanised, 50mm in diameter and set in concrete that is 450mm deep and 250mm in diameter; or
 - ii. termite treated timber, 100mm in diameter and set in concrete that is 450mm deep and 300mm in diameter.
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Schedule 3

Commercial lot or an Industrial lot

[clause 2.1(2)(b)]

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

A sufficient fence is a fence which comprises rail-less link or chain mesh that is a minimum height of 1800mm, and to upon which up to three strands of barbed wire carrying the fence to a height of 2100mm may be placed, supported by:

- i. galvanized iron posts 50mm in diameter, spaced at 3 metre centres sunk 600mm in the ground , set in a concrete footing 600mm deep and 250mm diameter; or
 - ii. termite treated timber posts 100mm in diameter, spaced at 3 metre centres sunk 600mm in the ground, set in a concrete footing 600mm deep and 350mm diameter..
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Schedule 4

Rural lot

[clause 2.1(2)(c)]

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT

1. Lot boundary fencing shall be of post and rail or post and wire unless otherwise approved by the local government or as otherwise stated in the local planning scheme.
 2. Fencing shall be erected and maintained so as to securely confine all animals and livestock owned by the owner or occupier within the boundaries of the property.
 3. Barbed wire is permitted on fencing within this zone.
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Dated – 27 August 2015

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

C. Shales, President

A.W. PRICE, Chief Executive Officer.