



## **FENCING LOCAL LAW 2016**

*Dividing Fences Act 1961*  
*Local Government Act 1995*

**Shire of Gingin**

**FENCING LOCAL LAW 2016**

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*Local Government Act 1995*

Shire of Gingin

**Fencing Local Law 2016**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Gingin resolved on 20 September 2016 to make the following local law

**Part 1 - Preliminary**

**1.1 Citation**

This local law may be cited as the *Shire of Gingin Fencing Local Law 2016*.

**1.2 Commencement**

This local law commences on the 14<sup>th</sup> day after the day on which it is published in the *Government Gazette*.

**1.3 Repeal**

The *Shire of Gingin By-laws Relating to Fencing* published in the *Government Gazette* on 12 September 1975 are repealed.

**1.4 Application**

This local law applies throughout the entire district.

**1.5 Terms used in this local law**

In this local law, unless the contrary intention appears –

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

***application*** means an application for approval under this local law;

***application fee*** means the fee determined by the local government under section 6.16 of the *Local Government Act 1995* and payable upon lodgement of an application for a permit and which relates to the lodgement, assessment and determination of the application;

***Building Code*** means the latest edition of the Building Code of Australia published annually by, or on behalf of, the Australian Building Codes Board;

***Commercial Lot*** means a lot where a commercial use –

(a) is or may be permitted under the Local Planning Scheme; or

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

**composite fence** means a fence that is constructed using multiple dissimilar materials;

**district** means the district of the local government;

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

**fence** means any structure, including a retaining wall, used or functioning as a boundary and including any gate;

**front setback area** means the area between the front boundary and the front setback line as determined by the local planning scheme;

**height** in relation to a fence means any 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 local planning scheme; or

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

**licence** means a licence under this local law;

**licensee** means a person who holds a licence;

**local government** means the Shire of Gingin;

**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 under the *Planning and Development Act 2005*;

**Residential Lot** means a lot where a residential use –

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

(b) 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;

**Rural Lot** means a lot where a rural use –

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

**Rural Living Lot** means a lot where a Rural Living use –

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

**Schedule** means a Schedule under this local law; and

**sufficient fence** means a fence as described in clause 2.1.

## **Part 2 – Sufficient fences**

### **2.1 Sufficient fences**

For the purpose of the definition of “sufficient fence” in the *Dividing Fences Act 1961*, for that part of the district described in Column 1 of Schedule 1, a fence described in Column 2 of Schedule 1 immediately opposite the description of that part, is a sufficient fence.

## **Part 3 – Fences requiring a licence**

### **3.1 Fences requiring a licence**

- (1) A person must not, without a licence, erect –
  - (a) a brick, masonry, stone, concrete, composite or similar fence;
  - (b) a fence that does not meet the requirements of a fence as listed in Schedule 1;
  - (c) a fence within the front setback area that is above 1200mm in height;
  - (d) a fence greater than 1800mm in height; or
  - (e) any fence not listed in Schedule 1.
- (2) A person who contravenes this clause commits an offence.

## **Part 4 – Prohibited materials**

### **4.1 Materials prohibited in fences**

- (1) A person must not erect a fence which is comprised, in whole or in part of -

- (a) broken glass with jagged or spiked projections;
  - (b) razor wire; or
  - (c) on a residential lot, barbed wire without approval of the local government.
- (2) A person who contravenes this clause commits an offence.

## **Part 5 – Licensing**

### **5.1 Who may apply for licence**

An application for a licence may only be made to the local government by an individual.

### **5.2 Application for licence**

An application must be –

- (a) in writing in a form approved by the local government from time to time;
- (b) accompanied by any document or information that is required under this local law; and
- (c) accompanied by the application fee.

### **5.3 Information required for application**

The following documents and information are required to accompany an application -

- (a) two copies of specifications describing the materials to be used in the construction of the new fence and where not indicated on the drawings, the sizes thereof together with all other information not shown on the drawings, which is necessary to show that the fence will, if constructed in accordance with the specifications, comply with the provisions of the Building Code;
- (b) a block and drainage plan (to a scale of not less than 1:500) showing:
  - (i) street names, lot number and title reference to the site with the north point clearly marked;
  - (ii) the size and shape of the site;
  - (iii) the dimensioned position of the proposed new fence and of any existing buildings on the site; and
  - (iv) the relative levels of the site with respect to the street or way adjoining; and

- (c) any other information the local government considers necessary in the circumstances of the case.

#### **5.4 Further information relevant to application**

- (1) The local government may ask an applicant for any additional document or information that the local government considers is or could be relevant to making a decision on the application.
- (2) If the local government makes a request under subclause (1) the local government does not have to consider the application, or consider it further, until the request is complied with.
- (3) Any costs incurred in complying with the request under subclause (1) are to be paid by the applicant unless the local government determines otherwise.

#### **5.5 Power of local government to grant licence**

Where an application is made to the local government, the local government may determine the application by –

- (a) granting a licence to the applicant to erect a fence referred to in clause 3.1; or
- (b) rejecting the application.

#### **5.6 Considerations relevant to determination of application**

In determining an application, the local government is to have regard to –

- (a) the suitability of the fence in the context of surrounding fences and in particular the amenity of the locality in general;
- (b) the comments of adjoining owners for fences greater than 1800mm in height; and
- (c) compliance with the Building Code.

#### **5.7 Other conditions**

The local government may grant a licence subject to any conditions that the local government considers appropriate.

#### **5.8 Contravention of conditions**

A licensee who contravenes a condition of the licence commits an offence.



## **Part 6 – Offences and penalties**

### **6.1 Offences**

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.
- (3) 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.

### **6.2 Infringement and infringement withdrawal notices**

For the purpose of this local law –

- (a) the form of the infringement notice referred to in sections 9.16 and 9.17 of the *Local Government Act 1995* is the form as decided by the local government from time to time; and
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the *Local Government Act 1995* is the form as decided by the local government from time to time.

### **6.3 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) The amount appearing in the final column of Schedule 2 directly opposite an offence described in that Schedule is the modified penalty for that offence.

### **6.4 Prosecution for offences**

A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in the Magistrates Court.

## **Part 7 – Objections and review**

### **7.1 Objections and review**

When the local government makes a decision under clause 5.5, the provisions of Part 9 Division 1 of the *Local Government Act 1995* and Regulation 33 of the *Local Government (Functions and General) Regulations 1996* apply to that decision.

**Schedule 1 - Sufficient Fences**  
[clause 2.1]

| COLUMN 1                            | COLUMN 2   |
|-------------------------------------|--|
| Description of part of the district | Description of sufficient fence  |
| Residential Lot                     | <p>(1) A fully enclosed timber fence built to manufacturer's specifications or in accordance with established construction techniques, the height of the fence to be a maximum of 1800mm except with respect to a fence within the front setback area for which the height of the fence is to a maximum of 1200mm.</p> <p>(2) A fence constructed of corrugated fibre reinforced pressed cement sheeting erected to manufacturer's specifications or which otherwise satisfies the following specifications –</p> <ul style="list-style-type: none"> <li>(a) a minimum in-ground length of 25% of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;</li> <li>(b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;</li> <li>(c) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturers written instructions; and</li> <li>(d) the height of the fence to be a maximum of 1800mm except with respect to the front set back area for which the height of the fence is to be a maximum of 1200mm.</li> </ul> <p>(3) A fence constructed of brick, stone, concrete or a composite fence to 1800mm and with respect to a fence within the front set back area, is visually permeable above 1200mm, which-</p> <ul style="list-style-type: none"> <li>(a) has been designed in accordance with the Building Code; or</li> <li>(b) certified by a practicing structural engineer; and</li> <li>(c) has had building approval as a Class 10b structure in accordance with the <i>Building Act 2011</i> and its subsidiary legislation.</li> </ul> |

|   |   |
|---|---|
| <p>Commercial Lot or Industrial Lot</p> | <p>(4) A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications –</p> <ul style="list-style-type: none"> <li>(a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm depth;</li> <li>(b) intermediate posts to be minimum 32mm nominal bore x 3.15mm at maximum 4m centres and with footings 225mm x 600mm depth;</li> <li>(c) struts to be minimum 32mm nominal bore x 3.15mm fitted at each gate and 2 at each corner post and with footings 225mm x 600mm depth.;</li> <li>(d) cables to be affixed to the top, centre and bottom of all posts and to consist of 2 or more 3.15mm wires twisted together or single 4mm wire;</li> <li>(e) rail-less link, chain or steel mesh is to be a height of 1800mm on top of which are to be 3 strands of barbed wire carrying the fence to a maximum height of 2400mm; and</li> <li>(f) galvanised link mesh wire to be a height of 1800mm and constructed of 50mm x 50mm x 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 3600mm and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 50mm x 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.</li> </ul> <p>(5) A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Item 2 above.</p> <p>(6) Subject to the written approval of the local government, painted galvanised steel or aluminium sheeting may be used behind the building line to a maximum of 2400mm high when supported on posts and rails to the satisfaction of the local government.</p> |
| <p>Rural Lot</p>                        | <p>(7) Fences of timber, brick, stone or concrete constructed in accordance with the requirements referred to in Items 1</p>  |

|              |  |
|--------------|--|
|              | <p>and 3 above.</p> <p>(8) In the case of non-electrified fence, a sufficient fence on a Rural Lot is a fence of posts and wire construction, the minimum specifications for which are –</p> <p>(a) wire shall be high tensile wire and not less than 2.5mm. A minimum of 5 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;</p> <p>(b) posts shall be of indigenous timber or other suitable material including –</p> <p>(i) timber impregnated with a termite and fungicidal preservative;</p> <p>(ii) standard iron star pickets; or</p> <p>(iii) concrete.</p> <p>(c) if timber posts are used, timber posts are to be cut not less than 1800mm long x 70mm diameter at small end if round or 125mm x 60mm if split or sawn. Timber posts to be placed at not more than 10m intervals, set a minimum 600mm in the ground and 1200mm above the ground; and</p> <p>(d) strainer posts if timber, shall 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.</p> <p>(9) An electrified fence having 4 wires only is a sufficient fence if constructed generally in accordance with Item 8 above.</p> |
| Rural Living | <p>(10) In the case of a non-electrified fence, unless otherwise stipulated by the Planning Scheme a sufficient fence on a Rural Living Lot is: a fence of posts and wire construction, the minimum specifications for which are -</p> <p>(a) wire shall be high tensile wire and not less than 2.5mm. A minimum of 5 wires shall be used, general with the lower wires spaced closer together than the</p>  |

|                    |  |
|--------------------|--|
|                    | <p>higher wires so as to prevent smaller stock passing through, and connected to posts in all cases;</p> <p>(b) posts shall be of indigenous timber or other suitable material including –</p> <p>(i) timber impregnated with a termite and fungicidal preservative;</p> <p>(ii) standard iron star pickets; or</p> <p>(iii) concrete.</p> <p>(c) if timber posts are used, posts are to be cut not less than 1800mm long x 70mm diameter at small end if round or 125mm x 60mm if split or sawn. Posts are to be placed at not more than 10m intervals, set minimum 600mm in the ground and 1200mm above the ground; and</p> <p>(d) strainer posts, if timber shall 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 at a minimum of 1000mm in the ground and set at all corners, gateways and fence line angles but not exceeding 200m apart.</p> |
| <p>Corner Lots</p> | <p>A fence constructed otherwise in accordance with the requirements for Residential, Commercial or Industrial, Rural or Rural Living, which does not exceed a height of 1200mm for a distance of nine metres from the intersection on either the frontage or side boundary of the lot.</p>  |

**Schedule 2 – Modified Penalties**  
[clause 6.3(2)]

| Clause    | Description  | Modified Penalty<br>\$ |
|-----------|--|------------------------|
| 3.1(a)    | Erect a brick, masonry, stone, concrete, composite or similar fence without a licence                  | 250                    |
| 3.1(b)    | Erect a fence that does not meet the requirements of a fence as listed in Schedule 1 without a licence | 250                    |
| 3.1(c)    | Erect a fence within the front setback area that is above 1200mm in height without a licence           | 250                    |
| 3.1(d)    | Erect a fence greater than 1800mm in height without a licence  | 250                    |
| 3.1(e)    | Erect a fence not listed in Schedule 1 without a licence   | 250                    |
| 4.1(1)(a) | Erect a fence using broken glass with jagged or spiked projections                                     | 250                    |
| 4.1(1)(b) | Erect a fence using razor wire   | 250                    |
| 4.1(1)(c) | Erect a fence using barbed wire on a residential lot   | 250                    |
| 5.8       | Failure to comply with conditions of licence   | 250                    |

Dated this Fifteenth day of November 2006

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



David Roe

D W ROE  
Shire President

J Edwards

J EDWARDS  
Chief Executive Officer