

LOCAL GOVERNMENT ACT 1995

SHIRE OF PEPPERMINT GROVE

FENCING LOCAL LAW 2021

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Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Shire of Peppermint Grove resolved on 23 February 2021 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Peppermint Grove Fencing Local Law 2021*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The *Shire of Peppermint Grove Local Laws Relating to Fencing* published in the *Government Gazette* on 18 September 2001 is repealed.

1.5 Definitions

In this local law —

Act means the *Dividing Fences Act 1961*;

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

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

authorised person means a person authorised by the local government under section 9.10 of the *Local Government Act 1995* to carry out functions with respect to this local law;

barbed wire means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals;

Building Code has the meaning given in section 3 of the *Building Regulations 2012*;

Building Surveyor means a Building Surveyor acting on behalf of the local government;

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 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 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; or
- (e) any fence or associated fixture which in the opinion of the Chief Executive Officer may injure or damage person, animal or property which may come into contact with the fence.

district means the district of the local government;

dividing fence has the meaning given to it by the Act;

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

fence means any structure, not including a retaining wall, 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;

front fence means a fence erected on the front boundary of a lot or on a line adjacent to the front boundary;

front setback area means the area between the building line of a lot and the street boundary of that lot;

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;

local government means the Shire of Peppermint Grove;

local government property means land or buildings —

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or

- (c) which is an “otherwise unvested facility” under section 3.53 of the *Local Government Act 1995*

local planning scheme means a current local planning scheme made under the *Planning and Development Act*;

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;

occupier has the meaning given to it in the *Local Government Act 1995*;

owner has the meaning given to it in the *Local Government Act 1995*;

penalty unit has the meaning given to it in the *Shire of Peppermint Grove Penalty Units Local Law 2021*;

razor wire fence means a coiled strong wire with pieces of sharp cutting edges set across it at close intervals;

Residential Lot means a lot where a residential use—

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

retaining wall means any structure which is engineered and constructed to prevent the movement of soil or retains soil or structures in order to allow a change in ground levels (i.e. different elevations) to exist adjacent to one another;

Schedule means a Schedule to this local law;

sufficient fence means a fence described in clause 2.1; and

thoroughfare has the meaning given to it by the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government.

1.6 Licence fees and charges

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

PART 2 - FENCES

2.1 Sufficient fences

- (1) It shall be an offence for a person to 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 or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 1; and
 - (b) on a Commercial Lot is a dividing or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2.
- (3) Where a fence is erected on or adjacent to the boundary between 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 Schedule 2.
- (4) An application must be made to the local government for the grant of consent to any variation to the specifications in Schedule 2.
- (5) Unless an authorised person determines 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 Schedule 1.
- (6) Where a dividing fence is constructed of masonry, stone or concrete, or is combined with a retaining wall structure, or exceeds 1800 mm in height, it shall not be considered for approval unless it has been assessed and certified to comply with Australian Standards and Building Code of Australia for structural stability – such certification shall be provided by a suitably qualified engineer to the satisfaction of the CEO.
- (7) Notwithstanding any other provision in this local law, a boundary fence abutting local government property and proposed to exceed 1800 millimetres in height shall not be constructed before the approval of the local government has been obtained for such a fence.

2.2 Street Frontages

- (1) A person shall not, without the written consent of the Chief Executive Officer, erect a fence along the front boundary or within the front set-back area of a Residential Lot unless the fence has :-
 - (a) open aspect construction (minimum of 80% ratio of openings to overall panel area); and
 - (b) columns which shall not exceed 2.1 m in height above boundary height level, or natural ground level in the case of front setback; and
 - (c) exceed 600 mm in depth and 600 mm in width; and
 - (d) be less than 1.8 m clear of any adjoining column, pier or post.
- (2) Any infill panels forming part of a front boundary fence may be solid material to a height of 900 mm above natural ground level, and where taller than 900 mm shall be open timber,

wrought iron, steel or aluminium palings spaced to ensure the width between each paling is at least equal to the width of the paling with a minimum space of 50 mm and a minimum open aspect of 50 % of the infill panel.

- (3) Blade fencing, where the depth of the infill picket, proportionally more than the profile section facing the street, there shall be sufficient width so that views to the house are not obscured. This can be achieved where the gap between blades is a minimum of twice the depth. For instance, 25mm deep blades shall be spaced 50mm apart.
- (4) Proposals for a fence of a height greater than 1200 millimetres in the front setback area of a Residential Lot may only be considered for approval by the Council 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.
- (5) The provision of subclause (4) 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.

2.3 Gates in fences

All gates within a fence must either—

- (a) open entirely into the lot; or
- (b) slide parallel along the inside of the fence, to complete the fence alignment, when closed.

2.4 Depositing fencing material on public place

A person shall not deposit or permit the deposit of any materials whatsoever used in the construction or maintenance of any fence, on any thoroughfare, public place or local government property unless the approval of the local government has been obtained.

2.5 Maintenance of fences

An owner 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 to the amenity of the locality.

2.6 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.

2.7 Fences upon a right-of-way, public reserves, accessways or thoroughfares

The Council will not permit a fence or similar structure to be erected on public reserves managed by the local government on a permanent basis. Where a fence of similar structure has been erected to

isolate or secure a portion of a public reserve the local government may issue a Notice to the owner of the adjacent land to remove such structures and to restore the ground to its adjacent level at no cost to the local government.

2.8 General discretion of the local government

- (1) The local government will not intervene beyond the jurisdiction of the Act on matters concerning boundary fences which divide abutting private properties and in such cases only insofar as to advise respective owners of their remedy through mediation or civil action.
- (2) Notwithstanding sub clause (1) in those cases where the fence structure is determined by a certified engineer to be unsound and dangerous, the local government may at its discretion, instruct the removal, modification or repair to a dividing fence (which is not a sufficient fence) and that instruction is issued to all of the owners of the lots to be separated by the dividing fence for that purpose.

2.9 Prohibited fencing materials

- (1) A person shall not affix or use materials which may injure or otherwise cause detriment to persons or the environment.
- (2) Prohibited materials include jagged or broken glass, razor or barbed wire, sharpened metal spikes or serrated edges, electric current, or other materials or finishes considered in the opinion of the local government to constitute a hazard likely to cause injury or detriment to persons or impact the environment with a moderate to high exposure to that hazard.

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—
 - (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 *Local Government Act 1995*.
- (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 or 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—

- (a) runs with the lot to which it relates;
- (b) may be relied upon by any subsequent occupier or owner of the lot; and
- (c) may be enforced by the local government against a subsequent occupier or owner of the lot; and
- (d) may be transferred by request of the local government or the Western Australian Planning Commission to apply to any new lots created by virtue of amalgamation or subdivision.

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.
- (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 is required to remedy the breach within the time specified in 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 in a court of competent jurisdiction.
- (4) This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 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, Subdivision 3 of that Act.

PART 6 - OBJECTIONS AND REVIEW

6.1 Objections and review

When the local government makes a decision under clause 3.2, the provisions of Division 1 Part 9 of the *Local Government Act 1995*, and regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.

PART 7 - OFFENCES

7.1 Offences and penalties

- (1) Any 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) 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.

7.2 Prescribed offence

- (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 of the modified penalty for a prescribed offence shall be 25 penalty units.
- (3) Before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—
 - (a) commission of the prescribed offence is a relatively minor matter; and
 - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.
- (4) If this local law expresses a modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

7.3 Form of notices

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

Schedule 1

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

[clause 2.1(2)(a)]

Each of the identified categories in this Schedule is a sufficient fence on a Residential Lot and the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions - General principles.

Timber fence

- (a) corner posts to be 125mm x 125mm x 2400mm and intermediate posts to be 125mm x 75mm x 2400mm spaced at 2400mm centres;
- (b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
- (c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts;
- (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
- (e) rails to be 75mm x 50mm with each rail spanning 2 bays of fencing double railed or bolted to each post with joints staggered;
- (f) the fence to be covered with 75mm x 20mm sawn pickets, 1800mm in height placed 75mm apart and affixed securely to each rail; and
- (g) 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.

Corrugated fence

A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which 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 600mm;
- (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 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.

Brick, stone or concrete fence

A fence constructed of brick, stone or concrete, which satisfies the following requirements and specifications—

- (a) a site classification is to be provided by a professional engineer in accordance with AS 2870-2011 Residential slabs and footings (as amended);
- (b) the footing is to be designed in accordance with AS 2870-2011 Residential slabs and footings as amended;
- (c) footings of minimum 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
- (d) fences to be offset a minimum of 200mm at maximum 3000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3000mm centres;
- (e) expansion joints in accordance with the manufacturer's written instructions; and
- (f) 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.

Composite fence

A composite fence which satisfies the following specifications for the brick construction—

- (1)
 - (a) brick piers of minimum 345mm x 345mm at 1800mm centres bonded to a minimum height base wall of 514mm;
 - (b) each pier shall be reinforced with one R10 galvanised starting rod 1500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) 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 300mm 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 345mm x 345mm x 2700mm centres bonded to the base wall; and
 - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT

[clause 2.1(2)(b)]

Each of the identified categories in this Schedule, with minimum and maximum specifications where stated, is a sufficient fence on a Commercial Lot and the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions - General principles.

Galvanised or PVC fence and gate

A fence constructed of galvanised or PVC coated non-rail link mesh, chain mesh or steel mesh which satisfies the following specifications---

- (a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
- (b) 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;
- (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and 2 at each corner post and with footings 225mm x 600mm;
- (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;
- (e) non-rail 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 the requirements and standards of the local planning schemes; and
- (f) 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.

Other fences

- (a) a fence of cement sheet or steel sheeting constructed to the minimum specifications referred to in Schedule 1;
- (b) 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
- (c) a fence of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 1.

Dated 9th March 2021

The Common Seal of the)
Shire of Peppermint Grove)
was affixed by authority of a resolution of)
the Shire in the presence of-)



A handwritten signature in black ink, appearing to read "Rachel Thomas".

Cr Rachel Thomas
President

A handwritten signature in black ink, appearing to read "Don Burnett".

Don Burnett
Chief Executive Officer

File Ref: Fencing Local Law

2 July 2021



Shire of
Peppermint Grove

Mr Geoff Baker MLA
Legislative Council Committee Office
Parliament House 14 Harvest Terrace
West Perth WA 6005

delleg@parliament.wa.gov.au

Dear Geoff

Shire of Peppermint Grove Fencing Local Law 2021

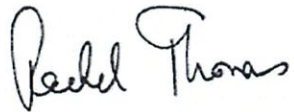
The Shire of Peppermint Grove has adopted a new Fencing Local Law. As per your recent correspondence, the Shire can confirm it will progress the following undertakings pursuant to section 2.80(d) of the Local Government Act 1995:

Undertakings

1. Delete the defined term 'Building Surveyor' identified above.
2. Amend clause 2.1 (6) to clarify that approval of a dividing fence is considered 'by the local government'.
3. Amend the reference to 'Building Code of Australia' in clause 2.1(6) to 'Building Code'.
4. Amend the reference to 'Australian Standards' in clause 2.1(6) to refer to the title of the specific standard that is intended to apply.
5. Replace the reference to the 'Chief Executive Officer' in clause 2.2n to 'CEO'.
6. Amend clause 2.2(l)(c) and (d) to ensure they are grammatically correct when read from the end of subsection (1).
7. When the local law is next reviewed or amended, consider re drafting clause 2.2(3) to improve readability.
8. Replace the term 'Council' in clauses 2.2(4) and 2.7 with 'local government'.
9. Replace the term 'Notice' in clause 2.7 with 'notice of breach'.
10. When the local law is next reviewed or amended, consider re-drafting clause 2.80) and (2) to use consistent terminology.
11. When the local law is next reviewed or amended, consider removing the words "moderate to high exposure' from clause 2.9.
12. Ensure all consequential amendments arising from the undertaking will be made.
13. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.

Should you require any further information, please do not hesitate to contact Don Burnett, Chief Executive Officer Don.burnett@peppermintgrove.wa.gov.au or on 9286 8600.

Yours sincerely,

A handwritten signature in black ink that reads "Rachel Thomas". The signature is written in a cursive style with a large initial 'R'.

Rachel Thomas
Shire President