

LOCAL GOVERNMENT ACT 1995

SHIRE OF WAROONA

FENCING LOCAL LAW 2025

CONTENTS

PART 1 – PRELIMINARY

- 1.1 Citation and application
- 1.2 Commencement
- 1.3 Repeal and transitional provisions
- 1.4 Definitions and interpretation
- 1.5 Relationship with other laws

PART 2 – FENCES

Division 1 – Sufficient Fences

- 2.1 Sufficient fence

Division 2 – Fencing General

- 2.2 Dividing fences
- 2.3 Compliance with local planning scheme and Residential Design Codes
- 2.4 Fencing within the front setback area
- 2.5 Gates in fences
- 2.6 Sightlines at vehicle access point
- 2.7 Maintenance of fences

Division 3 – Fencing Materials

- 2.8 Prohibited fencing materials
- 2.9 Barbed and razor wire fence
- 2.10 Electrified fences

PART 3 – APPROVALS

- 3.1 Application for approval to vary a requirement of this local law
- 3.2 Decision on application for approval
- 3.3 Compliance with approval
- 3.4 Duration of Approval

PART 4 – OFFENCES

- 4.1 Offences and general penalty
- 4.2 Prescribed offences
- 4.3 Form of infringement notices

SCHEDULE 1 - A SUFFICIENT FENCE ON A RESIDENTIAL LOT BEHIND THE FRONT SETBACK

SCHEDULE 2 - A SUFFICIENT FENCE ON A COMMERCIAL LOT OR INDUSTRIAL LOT

SCHEDULE 3 - A SUFFICIENT FENCE ON A RURAL LOT

SCHEDULE 4 - PRESCRIBED OFFENCES AND MODIFIED PENALTIES

SCHEDULE 5 - APPLICATION FORM TO VARY A REQUIREMENT OF THIS LOCAL LAW

DRAFT

LOCAL GOVERNMENT ACT 1995
SHIRE OF WAROONA
FENCING LOCAL LAW 2025

Under the powers conferred by the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Waroona resolved on <insert date> to make the following local law.

PART 1 – PRELIMINARY

1.1 Citation and application

This local law may be cited as the *Shire of Waroona Fencing Local Law 2025*.

1.2 Commencement

This local law will come 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 and transitional provisions

- (1) The Shire of Waroona Fencing Local Law 2014, published in the *Government Gazette* on 16 January 2015 is repealed.
- (2) A permit or other authorisation under a repealed local law that is in force before the commencement day is to be regarded on and after that day as a permit under this local law and may be dealt with accordingly.

1.5 Definitions and interpretation

- (1) In this local law unless the context requires otherwise:

Act means the *Local Government Act 1995*;

AS/NZS means an Australian or Australian/New Zealand Standard (as applicable) published by Standards Australia, as amended from time to time;

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

barbed wire fence 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 to it in regulation 3 of the *Building Regulations 2012*;

building permit has the meaning given to it in the *Building Act 2011*;

CEO means the Chief Executive Officer of the Local Government;

commercial lot means a lot zoned commercial, service commercial, mixed use, centre or an equivalent commercial zone under the local planning scheme and/or structure plan, but does

not include a lot occupied by a residential building;

dangerous, in relation to any fence, means:

- (a) an electrified fence, or one containing barbed or razor wire, other than a fence that is constructed and maintained in accordance with this local law;
- (b) a fence containing exposed broken glass, asbestos fibre or any other potentially harmful projection or material; or
- (c) 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 Shire of Waroona and includes any area placed under the jurisdiction of the Shire pursuant to any Act or Regulation;

dividing fence has the meaning given to it in the *Dividing Fences Act 1961* (as amended from time to time);

Section 5 of the *Dividing Fences Act 1961* defines “dividing fence” to mean “a fence that separates the lands of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary”.

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

fence means any structure, not including a retaining wall, that is used or functions as a barrier, irrespective of where it is located, and includes any gate;

front boundary means the boundary that separates a thoroughfare and the front of a lot;

front fence means a fence in the front setback area of a lot;

front setback means the horizontal distance between the front boundary and a wall of a building, measured at a right angle to the front boundary;

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 situated within an industrial development, light industry, general industry, strategic industry zone or an equivalent industrial zone under the local planning scheme and/or structure plan;

land means land in the district and includes a house, building, work or structure, in or on the land;

local government means the Shire of Waroona

local planning scheme means a local planning scheme made by the local government under the *Planning and Development Act 2005*;

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

occupier where used in relation to land means the person by whom or on whose behalf the land is actually occupied or, if there is no occupier, the person entitled to possession of the land;

open fence means a fence:

- (a) that has continuous vertical or horizontal gaps of 50 mm or greater width comprising not less than one third of the total surface area; or
- (b) that has continuous vertical or horizontal gaps less than 50 mm in width, comprising at least one half of the total surface area in aggregate; or
- (c) that has a surface offering equal or lesser obstruction to view; and
- (d) the lower portion of which may be closed up to a height of 1.2 m above the natural ground level measured from the primary street side of the fence;

owner, for the purposes of the definition of 'dividing fence', has the meaning given to it in the *Dividing Fences Act 1961*;

owner, for all other purposes, has the meaning given to it in the Act;

Section 5 of the *Dividing Fences Act 1961* defines "owner" as follows:

"**owner**, in relation to land, includes every person who —

- (a) jointly or severally, whether at law or in equity —
 - (i) is entitled to land for any estate of freehold in possession; or
 - (ii) is entitled to receive or is in receipt of or if the land were let to a tenant would be entitled to receive the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise;
- or
- (b) is the holder of a lease of land the unexpired term of which is not less than 5 years at the time —
 - (i) notice to fence is given by or to him pursuant to section 8;
 - (ii) he makes application to the court under section 11(1);
 - (iii) a copy of an order made pursuant to section 11(2) is given to him;
 - (iv) notice is given by or to him pursuant to section 15,

but does not include any trustees or other persons in whom land is vested as a public reserve, public park or for such other public purposes as may be prescribed, or a person who has the care, control and management of a public reserve, public park or land used for such other public purposes as may be prescribed;"

person means any natural person, company, public body, association or body of persons, corporate or unincorporated and includes an owner, occupier, licensee and permit holder (as applicable), but does not include the local government;

public place means a place to which the public has access;

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

reserve means land (including a parkland or foreshore) in or adjoining the district that is:

- (a) set apart for the use and enjoyment of the public; or
- (b) acquired for public purposes and vested in or under the care, control and management of the local government;

residential lot means any lot:

- (a) situated within a residential, urban development or an equivalent residential zone as classified by the local planning scheme and/or structure plan; or
- (b) which is or will be predominantly used for residential purposes;

but does not include a rural 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 any lot situated within a rural, rural residential, special residential, rural smallholdings or an equivalent rural zone as classified by the local planning scheme or structure plan;

structure plan has the meaning given to it in the local planning scheme;

sufficient fence means a fence described in clause 2.1;

thoroughfare has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management or control of the local government;

uniform fence means a fence erected by a developer or subdivider in accordance with a subdivision approval which divides a residential lot from a public place such as a pedestrian access way, public open space or road reserve.

- (2) Any other expression used in this local law and not defined herein shall have the meaning given to it in the Act or the *Dividing Fences Act 1961* (as applicable).

1.6 Relationship with other laws

- (1) In the event of any inconsistency between the provisions of a local planning scheme and the provisions of this local law, the provisions of the local planning scheme will prevail.
- (2) Except as described below, nothing in this local law affects the need for compliance, in respect of a fence, with any relevant provisions –
 - (a) of a local planning scheme; and
 - (b) that apply if a building permit is required for a fence under the *Building Act 2011* or *Building Regulations 2012*.
- (3) A dividing fence constructed and maintained as a sufficient fence under this local law does not require a building permit.

PART 2 – FENCES

Division 1 – Sufficient Fences

2.1 Sufficient fences

- (1) Subject to subclause (2) and (3), a sufficient fence –
 - (a) on a residential lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 1;
 - (b) on a commercial lot or an industrial lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 2; and

- (c) on a rural lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 3.
- (2) Where a fence is constructed on or near the boundary between a residential lot and any of the following -
- (a) an industrial lot;
 - (b) a commercial lot; or
 - (c) a rural lot,
- a sufficient fence is a dividing fence constructed and maintained in accordance with the requirements of Schedule 1.
- (3) Where –
- (a) the zoning of a lot is changed from 'Rural' to 'Residential' under a local planning scheme; and
 - (b) immediately before that zoning change a dividing fence on that lot is a sufficient fence,
- the requirements of Schedule 1 will not apply to that dividing fence until a residential use becomes the predominant use for that lot.
- (4) A dividing fence or any fence lawfully erected prior to this local law coming into operation constitutes a sufficient fence.
- (5) An asbestos fence, even where it has been erected lawfully and is in a condition that may not present an immediate health or safety risk and where it may comply with all other provisions of this local law, will be deemed an insufficient fence.
- (6) Fencing shall be erected and maintained to adequately contain stock and/or other types of animals on the property where they exist, including but not limited to, cattle, sheep, horses and dogs.
- (7) In respect to Schedules 1, 2 and 3, fencing shall be erected to the following standards:
- (a) to the manufacturer's specifications or to a sufficient structural standard;
 - (b) with new materials;
 - (c) without faded, stained, defaced, damaged, dented, corroded, rusted or rotten materials;
 - (d) in a straight, upwards direction;
 - (e) in a way that will not, or does not, cause stormwater runoff or erosion issues;
 - (f) in a manner that does not prejudice the amenity or safety of the area;
 - (g) to the satisfaction of the local government.

Division 2 – Fencing General

2.2 Dividing fences

- (1) Unless by agreement between the owners of adjoining lots, a person must –

- (a) not construct or alter a dividing fence on a lot so that it does not satisfy the requirements for a sufficient fence as set out in this local law;
 - (b) not attach anything to a dividing fence;
 - (c) maintain a dividing fence in a condition which satisfies the requirements of a sufficient fence; or
 - (d) not alter the level of the ground adjoining the boundary so as to change the height of a dividing fence unless the dividing fence is altered, reconstructed or relocated so as to satisfy the requirements of a sufficient fence.
- (2) An agreement in respect of a dangerous fence is taken not to be an agreement between owners of adjoining lots for the purposes of clause 2.1(1) of this local law.
- (3) Without limiting clause 1.6, an agreement between the owners of adjoining lots does not negate the need to obtain approval under any other written law.

2.3 Compliance with local planning scheme and Residential Design Codes

- (1) Notwithstanding the provisions of clause 2.1, a person shall not erect a fence within the front or rear setback areas, including along the side boundaries, unless the fence complies with the provisions of the local planning scheme or the Residential Design Codes.
- (2) Where there is inconsistency between the standards and requirements of the local planning scheme and those specified in the Residential Design Codes, the standards and requirements of the local planning scheme shall prevail to the extent of the inconsistency.

2.4 Fencing within the front setback area

- (1) On a residential lot, a front fence shall be constructed of face finished brick, concrete, stone or timber palings, or a combination of the aforementioned materials or similar (but excluding fibre cement sheeting or sheet metal), that complement the dwelling and do not detract from the streetscape.
- (2) On an industrial lot, a front fence shall be constructed and maintained as an open 'garrison' style' fence and not exceed a height of 1.8m.
- (3) On a rural lot, a front fence shall be not greater than 1.2m in height and shall be constructed from posts and wire.

2.5 Gates in fences

A person must not construct or maintain a gate that opens into a reserve.

2.6 Sightlines at vehicle access point

A fence adjacent to any vehicle access point, or where two streets intersect, must be truncated with the minimum dimension of the truncation being 1.5m or the fence reduced in height to no more than 0.75m.

2.7 Maintenance of fences

- (1) This clause 2.7 applies to any fence.
- (2) An owner or occupier of a lot on which a fence is constructed must maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, unsightly, or prejudicial to the amenity of the locality.

- (3) An owner or occupier of a lot on which a fence is constructed who fails to maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, unsightly, or prejudicial to the amenity of the locality, commits an offence under this local law.
- (4) An owner or occupier of a lot adjacent to a uniform fence must, where that fence is damaged, dilapidated or in need of repair, ensure that –
 - (a) it is repaired or replaced with the same or similar materials with which it was first constructed; and
 - (b) so as far as practicable the repaired or replaced section of fence is the same, including of same height, as the original fence.

Division 3 – Fencing Materials

2.8 Prohibited fencing materials

In constructing or maintaining a fence a person must not use –

- (a) except where specifically allowed by this local law, broken glass or any other potentially harmful projection or material;
- (b) asbestos fibre;
- (c) any material that is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause; or
- (d) pre-used materials, unless they are painted or treated to the satisfaction of the local government.

2.9 Barbed and razor wire fences

- (1) On a residential lot or any other lot abutting such a lot, a person shall not erect or affix to any fence any barbed wire, razor wire or other material with spiked or jagged projections.
- (2) On an industrial lot or a commercial lot, a person shall not erect or affix to any fence bounding that lot any barbed wire, razor wire or other materials with spiked or jagged projections unless the wire or materials are not less than 2.0m from ground level.
- (3) If the posts which carry the barbed wire, razor wire or other materials referred to in subclause (2) 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 material do not encroach on adjoining land.
- (4) On a rural lot, a person 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.

2.10 Electrified fences

- (1) On a residential lot or commercial lot or any other lot abutting such a lot, a person shall not erect or affix an electrified fence.
- (2) On a rural lot or industrial lot, an electrified fence shall –
 - (a) comply with any applicable AS/NZS;
 - (b) comply with any requirements of Western Power; and

- (c) be inoperable during the hours of business, if any.

Part 3 – Approvals

3.1 Application for approval to vary a requirement of this local law

- (1) An owner or occupier of a lot shall not vary the requirements of this local law without obtaining the approval of the CEO.
- (2) Where a person is required to obtain the approval of the CEO to vary a requirement of this local law, that person shall apply for approval in accordance with subclause (3) prior to the fence being erected or the variation occurring, whichever is applicable.
- (3) An application to vary the requirements of this local law shall –
 - (a) be in the form prescribed in Schedule 5;
 - (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 sections 6.16 to 6.19 of the Act.
- (4) The CEO may require an applicant to provide additional information reasonably related to an application before determining an application for approval referred to in subclause (1).
- (5) The CEO may refuse to consider an application for approval which is not in accordance with subclauses (3) and (4).

3.2 Decision on application to vary a requirement of this local law

- (1) The CEO shall deal with an application to vary a requirement of the local law or may refer the application to Council for determination.
- (2) The CEO or local government may -
 - (a) approve an application to vary a requirement of this local law unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for variation.
- (3) If the CEO or local government approves an application for approval, it is to issue to the applicant an approval in the form determined by the CEO.
- (4) If the CEO or local government refuses to approve an application for approval, the CEO is to give written notice of that refusal to the applicant.
- (5) 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 CEO 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.

PART 4 – OFFENCES

4.1 Offences and general penalty

- (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) A person who commits an offence under this local law is liable, on conviction, to a penalty not less than \$3,500 and not exceeding \$5,000 and, if the offence is of a continuing nature, to an additional daily penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

4.2 Prescribed offences

- (1) An offence against a provision of this local law specified in Schedule 4 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The modified penalty for a prescribed offence is that specified in the fourth column of Schedule 4.

4.3 Form of infringement notices

For the purposes of this local law -

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

Schedule 1

A SUFFICIENT FENCE ON A RESIDENTIAL LOT BEHIND THE FRONT SETBACK

[clause 2.1(1)(a)]

- (1) This Schedule does not apply to a uniform fence or a front fence.
- (2) Refer to clause 2.4 of this local law for fences within the front setback area.
- (3) On a residential lot, a sufficient fence is a dividing fence that –
 - (a) is constructed of:
 - (i) corrugated fibre-reinforced pressed cement sheeting;
 - (ii) timber palings;
 - (iii) masonry (including brick, stone or concrete);
 - (iv) factory coloured sheet metal post and panelled fence;
 - (v) PVC panel (eg. Duralock); or
 - (vi) any combination of the materials described in paragraphs (i)-(v);
 - (b) is between 1.75m and 1.85m in height; and
 - (c) where constructed of masonry, is in accordance with AS/NZS for masonry construction that has been adopted by the Building Code at the time of construction.

Schedule 2

A SUFFICIENT FENCE ON A COMMERCIAL LOT OR INDUSTRIAL LOT

[clause 2.1(1)(b)]

- (1) This Schedule does not apply to a uniform fence or a front fence.
- (2) Refer to clause 2.4 of this local law for fences within the front setback area.
- (3) On a commercial lot or industrial lot, a sufficient fence is a dividing fence that –
 - (a) is constructed of:
 - (i) link mesh, chain mesh or steel mesh and is no higher than 2.0m, unless it is topped with up to three strands of barbed wire to a total height of no more than 2.4m;
 - (ii) fibre reinforced cement sheets;
 - (iii) painted or galvanized steel or aluminium sheeting; or
 - (iv) timber or masonry (including brick, stone or concrete);
 - (b) is no more than 2.4m in height; and
 - (c) where constructed of masonry, is in accordance with AS/NZS for masonry construction that has been adopted by the Building Code at the time of construction.

Schedule 3

A SUFFICIENT FENCE ON A RURAL LOT

[clause 2.1(1)(c)]

- (1) This Schedule does not apply to a uniform fence or a front fence.
- (2) On a rural lot, a sufficient fence is a dividing fence that -
 - (a) is at least 1.2m in height; and
 - (b) is constructed of posts and wire.

DRAFT

Schedule 4

PRESCRIBED OFFENCES AND MODIFIED PENALTIES

[clause 3.2]

Item No.	Clause No.	Nature of offence	Penalty
1	2.1(5)	Failing to erect or maintain fencing to adequately contain stock and/or other types of animals on the property where they exist.	\$500
2	2.1(7)	Failing to construct a sufficient fence to standards provided in clause 2.1(6).	\$500
2	2.2(1)	Constructing or altering a dividing fence which is not a sufficient fence.	\$500
3	2.2(1)(b)	Attaching anything to a dividing fence.	\$500
4	2.2(1)(c)	Failing to maintain a dividing fence in a condition which satisfies the requirements of a sufficient fence.	\$500
5	2.2(1)(d)	Altering the ground level of a dividing fence without satisfying the requirement of a sufficient fence.	\$500
6	2.4	Constructing a front fence that does not meet the specifications of fencing within the front setback area of a lot.	\$500
7	2.5	Constructing or maintaining a gate that opens into a reserve.	\$500
8	2.6	Constructing a fence adjacent to a vehicle access point without a truncation.	\$500
9	2.7	Failing to maintain or replace a fence to the same standard as the original fence.	\$500
10	2.8	Using a prohibited material in the construction or maintenance of a fence.	\$500
11	2.9	Using barbed or razor wire in a prohibited location or configuration.	\$500
12	2.10	Having and using an electrified fence in a prohibited manner.	\$500
13	3.1(1)	Failing to obtain approval for a variation of the requirements of this local law	\$500
14	3.3	Failing to comply with terms or conditions of approval	\$500

Schedule 5

APPLICATION FORM TO VARY A REQUIREMENT OF THIS LOCAL LAW

[clause 3.1(3)(a)]

Owner Details

Given Names: _____

Last Name: _____

Contact number: _____

Email address: _____

Address: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

If the property is owned by multiple owners, ALL signatures are required. If the property is owned in a company, a company resolution authorising the signatory is required. The application will NOT be processed without ALL signatures and company resolution (if required)

Applicant details (if not the same as above)

Given Names: _____

Last Name: _____

Contact number: _____

Email address: _____

Address: _____

Property details

Address: _____

Suburb: _____ Postcode: _____

Variation to fencing local law

Clause(s) of local law sought to be varied: _____

Detail of proposal: _____

Site plan attached Y/N: _____ Elevation plans attached Y/N: _____

Signature: _____ Date: _____

Dated the _____ day of _____ 2025

The Common Seal of the **Shire of Waroona** was affixed by authority of a resolution of the Council in the presence of-

CR JOHN MICHAEL SCOTT WALMSLEY, Shire President

MARK ANDREW GOODLET, Chief Executive Officer

DRAFT