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**CITY OF KARRATHA**  
**FENCING LOCAL LAW 2017**

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

**CITY OF KARRATHA**

**FENCING LOCAL LAW 2017**

Under the powers conferred by the *Dividing Fences Act 1961*, *Local Government Act 1995* and by all other powers the Council of the *City of Karratha* resolved to make the following local law on INSERT DATE.....

**PART 1 - PRELIMINARY**

**1. Citation**

This Local Laws may be cited as the *City of Karratha Fencing Local Law 2017*.

**2. Commencement**

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

**3. Application**

This Local Law applies throughout the district.

**4. Repeal**

The *Shire of Roebourne Local Laws Relating to Fencing* published in the *Government Gazette* on 29 August 2003, and as amended in the *Government Gazette* on 23 March 2004 are repealed.

**5. Interpretation**

In these Local Laws, 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;

*building approval* means an approval issued by a Permit Authority as per the provisions of the Building Act 2011.

*Building Surveyor* means a building service practitioner, as defined in the Building Services (Registration) Act 2011 section 3, who is registered in a class of building service practitioner that is prescribed for the purposes of this definition;

*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 permit under Part 5 of these Local Laws has been issued and is current;
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- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with these Local Laws;
  - (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. Frontage on a corner block will be the boundary nominated by the Building Surveyor.

***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 City of Karratha;

***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 15(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;

***Rural Residential 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 5; and

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

**6. Approval Fees & Charges**

- (1) A Building approval must be applied for and an approval granted for all fences. Application fees set by the Building Regulations 2012 as governed by the Building Act 2011 will be applied.
- (2) Where Planning approval is also required the fees and charges are determined in accordance with Planning and Development Act 2005 and the associated regulations.

**PART 2 - SUFFICIENT FENCES**

**7. Sufficient Fences**

- (1) Unless by agreement between the owners of adjoining properties, a person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Subject to sub-clauses (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, taking into consideration provisions of any local planning policies adopted by Council;
  - (c) on a Rural Lot and on a Rural Residential 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, taking into consideration provisions of any local planning policies adopted by Council;
  - (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 Rural 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.
- (4) Unless the Building Surveyor 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.

**PART 3 - GENERAL**

**8. Maintenance of Fences**

An owner and occupier 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.

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## **9. General Discretion of the Local Government**

- (1) Notwithstanding clause 7, the local government may consent to the erection or repair of a fence which does not comply with the requirements of these Local Laws.
- (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**

### **10. Fencing Materials**

- (1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only brick, stone, concrete, wrought iron, tubular steel framed, link mesh, timber, plastic coated or galvanised link mesh,, colour bonded metal or a material approved by the Building Surveyor.
- (2) Where the Building Surveyor 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 directed by the Building Surveyor.
- (3) Where required by the Building Surveyor Fencing designs are to be certified by a practicing structural engineer as being suitable for wind loadings found in Region D Importance Level 2 areas in accordance with AS1170

### **11. 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 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 Building Surveyor 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 150mm from the face of the fence and is not nearer than 2000mm 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.
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## **PART 5 - ELECTRIFIED AND RAZOR WIRE FENCES**

### **12. Requirements for a Building Approval**

- (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 Building Approval 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 Building Approval 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 3016:2002; 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 Building Approval to have a fence constructed wholly or partly of razor wire shall not be issued:
  - (a) if the fence is within 3m of the boundary of the lot;
  - (b) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.
- (4) An application for a building approval 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 building approval referred to in subclauses (2) or (3) may be:
  - (a) approved by the local government or other Permit Authority;
  - (b) approved by the local government or other Permit Authority subject to such conditions as it thinks fit; or
  - (c) refused by the local government or other Permit Authority.

## **PART 6 - NOTICES OF BREACH**

### **13. Notices of Breach**

- (1) Where a breach of any provision of these Local Laws has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner or occupier of that lot ('notice of breach').
  - (2) A notice of breach shall:
    - (a) specify the provision of these Local Laws which has been breached;
    - (b) specify the particulars of the breach; and
    - (c) state that the owner or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.
  - (3) Should an owner or occupier 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 or occupier of the lot, as the case may be, in a court of competent jurisdiction.
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## PART 7 - OFFENCES

### 14. Offences and Penalties

(1) An owner or occupier 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 these Local Laws 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.

### 15. Modified Penalties

(1) An offence against any provision of these Local Laws 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 these Local Laws is \$100.

### 16. Form of Notices

For the purposes of these Local Laws –

- (a) the form of the infringement notice referred to in section 9.17 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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**Clause 7(2)(a)**

**FIRST SCHEDULE**  
**SPECIFICATIONS FOR A SUFFICIENT FENCE**  
**ON A RESIDENTIAL LOT**

The following is a “sufficient fence” on a Residential Lot:

A fence constructed of materials specified in Clause 10, with the exclusion of any form of mesh and which satisfies the following:

- (a) the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Importance Level 2 areas in accordance with AS1170;
- (b) The height of the fence to be 1800mm except with respect to the front set back area which is subject to the provisions of State Planning Policy 3.1-Residential Design Codes.

Fencing which does not meet the provisions of this Local Law, but was installed and compliant as per the provisions of the repealed local law will be considered a sufficient fence provided that it is maintained in good order.

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**Clause 7(2)(b)**

**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) the fence design being certified by a structural engineer (or manufacturer) as being suitable for wind loadings found in a Region D Importance Level 2 area in accordance with AS1170;
- (b) rail-less link, chain or steel mesh is to be to a height of 1800mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm in accordance with clause 11 (3) of these Local Laws;
- (c) galvanised link mesh wire to be 2000mm in height. Vehicle entry gates shall provide an opening of not less than 3.6m. Gates shall be fixed with a drop bolt and locking attachment.

B. A fence of a material identified in Clause 10 constructed to the minimum specifications referred the First Schedule.

Fencing which does not meet the provisions of this Local Law, but was installed and compliant as per the provisions of the repealed local law will be considered a sufficient fence provided that it is maintained in good order.

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Clause 7(2)(c)

**THIRD SCHEDULE**

**SPECIFICATIONS FOR A SUFFICIENT FENCE  
ON A RURAL LOT AND ON A RURAL RESIDENTIAL LOT**

- A. 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 2.5mm. 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;cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn. Posts to be set minimum 600mm in the ground and 1200mm above the ground; and
  - (c) strainer posts shall be not less than 2250mm long and 50mm 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.
- B. An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with (A).

Fencing which does not meet the provisions of this Local Law, but was installed and compliant as per the provisions of the repealed local law will be considered a sufficient fence provided that it is maintained in good order.

Dated this ..... day of 2017.

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

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**P LONG, MAYOR**

.....  
**C ADAMS, CHIEF EXECUTIVE OFFICER**