

LOCAL GOVERNMENT ACT 1995
TOWN OF MOSMAN PARK
LOCAL LAWS RELATING TO FENCING

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Town of Mosman Park resolved to make the following local laws on the 24th day of February, 2004.

PART 1 - PRELIMINARY

1. Citation

These Local Laws may be cited as the Town of Mosman Park Local Laws Relating to Fencing.

2. Repeal

The Town of Mosman Park Local Laws Relating To Fencing published in the Government Gazette on 1st. June 1967 and amended from time to time, are repealed.

3. Application of Local Laws

These Local Laws apply throughout the district .

4. 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;

“Building Surveyor” means a Building Surveyor 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 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;
- (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 used or functioning as a barrier, irrespective of where it is located and includes any gate;

“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 Town of Mosman Park;

“lot” has the meaning given to it in and for the purposes of the *Town Planning and Development Act 1928*;

“notice of breach” means a notice referred to in clause 11(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;

“Schedule” means a Schedule to these Local Laws;

“setback area” has the meaning given to it for the purposes of the town planning scheme;

“sufficient fence” means a fence described in clause 6; and

“town planning scheme” means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*.

5. Licence Fees & Charges

All licence fees and charges applicable under these Local Laws shall be as determined by the local government from time to time in accordance with section 6.16 of the *Local Government Act 1995*.

PART 2 - SUFFICIENT FENCES

6. 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.
- (3) Where a fence is erected on or near the boundary between a Residential Lot and a Commercial Lot or between 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.
- (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.

- (5) Notwithstanding any other provisions in these Local Laws, a fence constructed of stone or concrete shall be a sufficient fence only if it is designed by a structural engineer where:
- (a) it is greater than 1800mm in height; or
 - (b) the Building Surveyor so requires.

PART 3 - GENERAL

7. *Maintenance of Fences*

An owner and occupier of a lot on which a fence is erected shall maintain the fence in good condition and so as to prevent it from becoming dangerous, dilapidated, or unsightly.

8. *General Discretion of the Local Government*

- (1) Notwithstanding clause 6, 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

9. *Fencing Materials*

- (1) A person shall construct a fence on a Residential Lot from only brick, stone, concrete, wrought iron, timber, corrugated fibre reinforced cement sheeting (provided corrugated fibre reinforced cement sheeting shall not be permitted forward of the front setback), colour bonded metal or a material approved by the Building Surveyor.
- (2) A person shall construct a fence on 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, corrugated fibre reinforced cement sheeting, colour bonded metal or a material approved by the Building Surveyor.
- (3) Where the Building Surveyor approves the use of pre-used materials in the construction of a fence under subclause (1) or subclause (2), that approval shall be conditional on the applicant for approval painting or treating the pre-used material as directed by the Building Surveyor.

10. *Barbed Wire and Broken Glass Fences*

- (1) An owner or occupier of a Residential Lot or 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.
- (2) 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 bottom row of wire or other materials is not nearer than 2000mm from the ground level.

- (3) If the posts which carry the barbed 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 materials do not encroach on adjoining land.
- (4) 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.

PART 5 - NOTICES OF BREACH

11. 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.

PART 6 - OFFENCES

12. 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.

13. 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.

14. 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.

FIRST SCHEDULE
SPECIFICATIONS FOR A SUFFICIENT FENCE
ON A RESIDENTIAL LOT

A "sufficient fence" shall be a fence constructed of materials described in clause 9(1) built to manufacturer's specifications or in accordance with established construction techniques. The height of the fence shall be 1800mm, or such other height approved by the Building Surveyor.

SECOND SCHEDULE
SPECIFICATIONS FOR A SUFFICIENT FENCE ON A
COMMERCIAL LOT AND AN INDUSTRIAL LOT

A "sufficient fence" shall be a fence constructed of materials described in clause 9(2) built to manufacturers specifications or in accordance with established building techniques. The height shall be approved by the Building Surveyor.

T. J. HARKEN, Chief Executive Officer

Dated this 26th day of February, 2004.