



**WESTERN
AUSTRALIAN
GOVERNMENT
Gazette**

ISSN 1448-949X (print)

ISSN 2204-4264 (online)

PRINT POST APPROVED PP665002/00041

3749



PERTH, FRIDAY, 2 SEPTEMBER 2016 No. 159 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 1.00 PM

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LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961

SHIRE OF KALAMUNDA

FENCING LOCAL LAW 2016

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DIVIDING FENCES ACT 1961**

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FENCING LOCAL LAW 2016

TABLE OF CONTENTS

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Application
- 1.3 Commencement
- 1.4 Repeal
- 1.5 Purpose and effect
- 1.6 Interpretation
- 1.7 Licence fees and charges

PART 2—SUFFICIENT FENCES

- 2.1 Sufficient fences

PART 3—GENERAL

- 3.1 Fences within street setback areas
- 3.2 Maintenance of fences
- 3.3 General discretion of the local government
- 3.4 Applications for approval of local government
- 3.5 Duration of approval
- 3.6 Revocation of approval

PART 4—FENCING MATERIALS

- 4.1 Fencing materials
- 4.2 Barbed wire and broken glass fences

PART 5—ELECTRIFIED AND RAZOR WIRE FENCES

- 5.1 Requirements for an approval

PART 6—NOTICES OF BREACH

- 6.1 Notices of breach

PART 7—OFFENCES AND PENALTIES

- 7.1 Offences and penalties
- 7.2 Modified penalties
- 7.3 Form of notices
- 7.4 Objections and appeals

SCHEDULE 1—Sufficient fence on a Residential Lot

SCHEDULE 2—Sufficient fence on a Commercial or Industrial Lot

SCHEDULE 3—Sufficient fence on a Rural or Special Rural Lot

LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961

SHIRE OF KALAMUNDA

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 Kalamunda resolved on 27 June 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

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

1.2 Application

This local law shall apply throughout the district.

1.3 Commencement

This Local Law will come into operation on the 14th day after the day on which it is published in the *Government Gazette*.

1.4 Repeal

The *Shire of Kalamunda Fencing Local Law 2008* published in the *Government Gazette* on 3 October 2008 is repealed.

1.5 Purpose and effect

(1) The purpose of this local law is to prescribe a sufficient fence and the standard for the construction of fences throughout the district.

(2) The effect of this local law is to establish the minimum requirements for fencing within the district.

1.6 Interpretation

In this local law, unless the context otherwise requires—

Act means the *Dividing Fences Act 1961*;

AS or AS/NSZ means an Australian or Australian/New Zealand Standard as published by Standards Australia and as amended from time to time;¹

boundary fence has the meaning given to it in the Act;

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

composite fence means a fence constructed of brick piers and with infill panels between the piers of materials other than brick or a fence where the supporting posts and infill panels are of different materials.

dangerous in relation to any fence means—

- (a) an electrified fence, other than a fence in respect of which a licence under Part 5 of this local law has been issued and is current;
- (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 (unless otherwise approved in accordance with Part 5 of this local law), or any other potentially harmful projection or material; or

¹ A copy of this Standard is available for viewing at the Shire of Kalamunda's Administration Centre

(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 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, but does not include a retaining wall unless otherwise stated in this Local Law;

frontage means the boundary line between a lot and the thoroughfare which that lot adjoins;

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 at the base of the fence or if the fence is constructed on a retaining wall the ground level at the base of the retaining wall and where the ground levels on each side of the fence are not the same, the higher ground level (whether at the base of the fence or retaining wall), immediately below that point;

Industrial Lot means a lot where an industrial use—

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

local government means the Shire of Kalamunda;

local planning scheme means a local planning scheme of the local government made under the *Planning and Development Act 2005*, or a town planning scheme which was made under the *Town Planning and Development Act 1928*;

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

notice of breach means a notice referred to in clause 6.1;

Residential Design Codes means State Planning Policy 3.1 Residential Design Codes prepared under section 26 of the *Planning and Development Act 2005* by the Western Australian Planning Commission, as amended from time to time;²

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

Schedule means a Schedule to this local law;

Special Rural Lot means a lot where a special rural use—

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

street setback area has the meaning given to it for the purposes of the Residential Design Codes;

structural engineer means a qualified engineer trained to understand and calculate the stability, strength and rigidity of built structures for buildings and non-building structures;

sufficient fence means a fence described in clause 2.1;

thoroughfare means a road or other thoroughfare and includes structures or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is open at each end; and

visually permeable has the meaning as defined in Appendix 1—Definitions of the Residential Design Codes.

1.7 Approval fees and charges

All approval fees and charges applicable under this local law shall be as 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—SUFFICIENT FENCES

2.1 Sufficient fences

(1) Unless approved by the local government under clause 3.3(1), a person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.

² A copy of the Residential design Codes may be viewed at the Shire of Kalamunda's Administration Centre or downloaded at http://www.planning.wa.gov.au/dop/pub/pdf/State_Planning_Policy_3.1-Residential_Design_Codes_Print.pdf

- (2) Subject to subclauses (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 Schedule 1.
 - (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 Schedule 2;
 - (c) on a Rural Lot and on a Special Rural Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3;
- (3) Where a fence is erected on or near the boundary between—
 - (a) a Residential Lot and an Industrial Lot, Commercial Lot, Rural Lot or Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1; and
 - (b) a Special Rural Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.
- (4) Unless the local government 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 Schedule 2.
- (5) Notwithstanding any other provisions in this local law, 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 local government so requires.

PART 3—GENERAL

3.1 Fences within street setback areas

- (1) A person shall not, without the approval of the local government, erect a fence greater than 1800mm in height, or a fence that is not visually permeable for a minimum height of 1.2m, within the street setback area of a Residential Lot within the district.
- (2) The local government may approve the erection of a fence of a height greater than 1800mm in the street setback area of a Residential Lot only 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 1500mm along the frontage to a distance of not less than 1500mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.
- (3) The provision of subclause (2) 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.

3.2 Maintenance of fences

An owner or 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, damaged, dilapidated, unsightly, or otherwise detrimental to the visual amenity of the streetscape or neighbouring properties.

3.3 General discretion of the local government

- (1) Notwithstanding clause 2.1, the local government may approve the erection or repair of a fence which—
 - (a) is not a sufficient fence; or
 - (b) otherwise requires approval under this Local Law.
- (2) In determining whether to approve the erection or repair of any fence under subclause (1), the local government may consider, in addition to any other matter that it is authorised 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.
 - (c) the visual amenity of the streetscape or neighbouring properties.

3.4 Applications for approval of local government

- (1) An application for approval of the local government under clause 3.3(1) must be—
 - (a) in writing in a form approved by the local government;
 - (b) accompanied by any document or information that is required by the local government; and
 - (c) accompanied by an application fee.
- (2) An application for approval 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.
- (3) An application for approval may be—
 - (a) approved by the local government;
 - (b) approved by the local government subject to such conditions as it thinks fit; or
 - (c) refused by the local government.

3.5 Duration of approval

An approval given under this Local Law shall transfer with the land to any new occupier or owner of the lot and shall continue in force and effect until—

- (a) the fence is removed;
- (b) the approval is revoked by the local government under clause 3.6; or
- (c) the owner of the lot surrenders the approval.

3.6 Revocation of approval

Subject to Division 1 Part 19 of the *Local Government Act 1995*, the local government may revoke an approval granted under this Part if—

- (a) the fence is not maintained in accordance with clause 3.2; or
- (b) there is a breach of any condition upon which the approval has been granted.

PART 4—FENCING MATERIALS

4.1 Fencing materials

(1) A person shall only construct a fence on a Residential Lot, a Commercial Lot, Industrial Lot or Rural Lot from those materials specified for a sufficient fence in respect of such a lot in Schedules 1, 2 or 3, or some other material approved by the local government.

(2) Where the local government approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant for approval painting or treating the pre-used material as directed by the local government.

4.2 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 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 local government 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 on that lot, whether internal or external, 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.

PART 5—ELECTRIFIED AND RAZOR WIRE SECURITY FENCES

5.1 Requirements for an approval

(1) Subject to subclauses (3 and 4) an owner or occupier of a lot, shall not—

- (a) erect or use an electrified security fence on that lot; or
- (b) construct a fence wholly or partly of razor wire on that lot;
- (c) unless approval of the local government is first obtained.

(2) Approval to erect or use an electrified fence or construct a fence wholly or partly of razor wire on that lot shall not be granted—

- (a) in respect of a lot which is, or which adjoins, a Residential or Rural Lot.

(3) Approval shall only be granted on lots other than Residential or Rural for an electrified security fence where—

- (a) Application is made to the local government for approval and the design and specifications for the fence will comply with AS/NZS 3016 –Electrical installations—Electric security fences; as amended from time to time; and
- (b) 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;
- (c) an electrified fence once erected must at all times comply with the provisions of AS/NZS 3016; as amended from time to time; and
- (d) comply with any requirements of Western Power.

(4) Approval to have a fence constructed wholly or partly of razor wire shall not be granted—

- (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; and
- (c) on any lots other than Commercial or Industrial lots.

PART 6—NOTICES OF BREACH**6.1 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 or occupier of that lot ('notice of breach').

(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 or occupier of the lot, as the case may be, is required to remedy the breach within 28 days from the giving of the notice.

(3) If an owner or occupier fails 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.

(4) The provision of this clause are subject to section 3.25 and item 12 of division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry on the land will be in accordance with Part 3, Division 3 of that Act.

PART 7—OFFENCES AND PENALTIES**7.1 Offences and penalties**

(1) An owner 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 this local law 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.

7.2 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) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$500.

7.3 Form of notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in section 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*;
- (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*.

7.4 Objections and appeals

When the local government makes a decision under this local law as to whether it will—

- (a) grant or refuse to grant a person an approval;
- (b) cancel an approval; or
- (c) give a person a notice under clause 6.1,

the provisions of Division 1 of Part 9 of the *Local Government Act 1995* and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.

SCHEDULE 1—SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

[Clause 2.1(2)(a)]

Each of the following is a "sufficient fence" on a Residential Lot—

1. A 1 metre high, 2.5mm wire mesh rail-less fence with steel posts at a maximum 3 metre spacing, terminal posts to be braced with a diagonal brace in the line of the fence.
2. A picket timber fence which satisfies the following specifications—
 - (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 double 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 two 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 setback area for which there is no minimum height, but which is subject to clause 3.1.
3. A fence constructed of corrugated fibre reinforced pressed cement or profiled coloured steel sheeting which satisfies the following specifications—
- (a) to be installed in accordance with the manufacturer's specifications;
 - (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 manufacturer's 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 3.1.
4. A fence constructed of brick, stone or concrete, which satisfies the following specifications—
- (a) footings having a minimum of 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
 - (b) 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;
 - (c) expansion joints in accordance with the manufacturer's written instructions; and
 - (d) the height of the fence to be 1800mm except with respect to the front setback area for which there is no minimum height, but which is subject to clause 3.1.
5. A composite fence having a minimum overall height of 1800mm except with respect to the front setback area for which there is no minimum height, but which is subject to clause 3.1, which satisfies the following specifications for the brick construction—
- (1)
 - (a) brick piers having a minimum of 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 having a minimum of 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.
6. A "Duralok" or similar PVC fencing system not exceeding 1.8m high, erected and installed in accordance with the manufacturer's specifications.

**SCHEDULE 2—SPECIFICATIONS FOR A SUFFICIENT FENCE ON A
COMMERCIAL LOT AND AN INDUSTRIAL LOT**

[Clause 2.1(2)(b)]

Each of the following is a "sufficient fence" on a Commercial Lot and an Industrial Lot—

1. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—
 - (a) corner posts having a minimum of 50mm normal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
 - (b) intermediate posts having a minimum of 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
 - (c) struts having a minimum of 30mm nominal bore x 3.15mm fitted at each gate and two 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 two or more 3.15mm wires twisted together or single 4mm wire;
 - (e) rail-less link, chain or steel mesh is to be to a height of 2000mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm in accordance with clause 4.2(3) of this local law; 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 3.6 metres, be designed to open inwards, 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 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.

2. A fence of fibre reinforced cement sheet or coloured steel sheeting constructed to the minimum specifications referred to in Schedule 1.
3. A fence constructed of aluminium or metal 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.
4. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 1.

SCHEDULE 3—SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL OR SPECIAL RURAL LOT

[Clause 2.1(2)(c)]

In the case of a non-electrified fence, each of the fences described in items 1 to 4 is a sufficient fence on a Rural or Special Rural Lot.

1. A fence of post and wire construction not exceeding 1.2m in height, 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;
 - (c) if timber posts are used, posts are to be 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 placed at not more than 10 metre intervals, set minimum 600mm in the ground and 1200mm above the ground; and
 - (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 200 metres apart.
2. A Duralok PVC fencing system not exceeding 1.2m in height erected and installed in accordance with the manufacturer's specifications.
3. A timber post and rail fence not exceeding 1.2m in height the minimum specifications for which are—
 - (a) the posts to be of a durability grade as defined in the Australian Standards or other suitable material including impregnated with termite and fungicidal preservatives not less than 1800mm long x 125mm diameter at the small end if round or 125mm x 75mm if sawn. Posts to be placed at not more than 2.7 metre intervals, set minimum 600mm in the ground and 1200mm above the ground;
 - (b) strainer posts, shall be not less than 2250mm long and 125mm diameter at the small end 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 200 metres apart; and
 - (c) rails shall be no less than two in number and 80mm round at the small end or 75mm x 50mm if sawn timber.
4. A concrete timber look post and rail fencing not exceeding 1.2m in height installed and erected in accordance with the manufacturers specifications.
5. An electrified low voltage fence on a Rural or Special Rural Lot having four wires is a sufficient fence only if constructed and maintained in accordance with AS/NZS 3014—Electrical Installations—Electric fences (as amended from time to time).

Dated this 12th day of August 2016.

The Common Seal of the Shire of Kalamunda was affixed by authority of a resolution of the Council in the presence of—

ANDREW WADDELL, Shire President.
RHONDA HARDY, Chief Executive Officer.
