

10.4 EXECUTIVE SERVICES

10.4.1 Stage One: Making the Fencing Local Law 2026 - Initiation of Local Law process

Date of Report:	1 April 2026
Applicant or Proponent:	Shire of Toodyay
File Reference:	F26/49-07
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Hart – Temporary Chief Executive Officer
Previously Before Council:	Nov 2023 – Local Law Review
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Current Fencing Local Law; 2. Amended Fencing Local Law 2026 (Track changes included); and 3. Advert - Fencing Local Law; and 4. Amended Fencing Local Law 2026 (track changes accepted).

PURPOSE OF THE REPORT

To seek Council approval to commence the statutory process under Section 3.12 of the *Local Government Act 1995* to make the amended *Shire of Toodyay Fencing Local Law 2026*, which will repeal and replace the *Shire of Toodyay Local Laws Relating to Fencing (1999)* (refer to **Attachment 1 and 2**) and then be advertised for public comment.

BACKGROUND

Local laws may only be made where authorised by the *Local Government Act 1995* or another written law and must not be inconsistent with State or Commonwealth legislation.

The Shire's current fencing local law was made in **1999** and relies on:

- repealed planning legislation (*Town Planning and Development Act 1928*),
- outdated terminology and definitions, and
- enforcement and approval mechanisms that no longer reflect contemporary legislative drafting standards.

At the November 2023 Ordinary Council Meeting, Council resolved, pursuant to section 3.16(4) of the *Local Government Act 1995*, to review and amend the fencing local law.

Since that time, officers have undertaken a comprehensive redraft of the local law to ensure it is legally robust, operationally clear, consistent with current legislation, and fit for purpose for the Shire's contemporary rural, residential and townsite context.

COMMENTS AND DETAILS

The proposed *Shire of Toodyay Fencing Local Law 2026* modernises and restructures the 1999 local law while retaining Toodyay-specific rural fencing outcomes where they remain appropriate. The key changes and reasons are outlined below.

- The proposed Shire of Toodyay Fencing Local Law 2026 updates and restructures the existing Fencing Local Law 1999. The revised local law retains provisions that reflect Toodyay's rural context where they remain appropriate, while introducing a more contemporary and coherent regulatory framework.
- The 2026 local law includes a comprehensive and updated definitions section that aligns with relevant legislation, including the Dividing Fences Act 1961, Local Government Act 1995, and Planning and Development Act 2005.
- References to repealed planning legislation and outdated terminology have been removed.
- New and clarified definitions include terms such as "sufficient fence", "front setback area", "razor wire fence", "development approval", and distinctions between rural and special rural land.
- A new Part 6 – Approvals has been introduced to provide a structured framework for the assessment and determination of applications. This Part sets out when approval is required, application requirements, matters to be considered in determining applications, and the ability to impose conditions, including provisions relating to the duration, transfer and cancellation of approvals. This replaces the fragmented consent provisions contained in the 1999 local law.
- Schedules prescribing sufficient fences have been substantially revised. These updates reflect contemporary construction materials, current engineering and wind loading considerations, and modern safety and amenity expectations. The schedules provide clearer distinctions between residential, commercial/industrial, rural and special rural fencing, and include requirements for structural engineer certification where applicable.

The proposed local law also strengthens and clarifies provisions relating to fencing within front setback areas, gate operation, and the use of materials that may present safety risks, including barbed wire, electrified and razor wire fencing. Provisions relating to entry powers and notices of breach have been updated to align with the requirements of the *Local Government Act 1995*.

Penalty and enforcement provisions have been modernised through the inclusion of a Schedule of Modified Penalties, with offences clearly linked to operational clauses. The associated forms and enforcement processes align with sections 9.16 to 9.20 of the *Local Government Act 1995*. Standardised approval templates have also been included for specific fencing types, such as electrified and razor wire fencing.

The draft Shire of Toodyay Fencing Local Law 2026 is complete and ready to be presented for public comment in accordance with section 3.12 of the *Local Government Act 1995*.

Section 3.12(2) of the *Local Government Act 1995* requires the person presiding at the meeting to give notice of the purpose and effect of the proposed local law.

The Officer Recommendation is drafted to satisfy this requirement if read aloud at the meeting.

It is recommended that Council resolve its intent to make the *Shire of Toodyay Fencing Local Law 2026*.

Section 3.12 (2) states:

"At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner."

It is recommended that the Presiding Person read out the entirety of the Officer Recommendation as a means of meeting this provision.

IMPLICATIONS TO CONSIDER

Consultative:

WALGA (model local law comparison)

Planning Services (alignment with Local Planning Scheme)

Strategic:

Shire of Toodyay Council Plan 2023-2033

The Shire regulates compliance with legislation, regulations, local laws and policies.

Outcome 5. High quality town planning complements our rural ambience and heritage.

Outcome 9. Responsible and effective leadership and governance.

Policy related:

Nil.

Financial:

Nil.

Legal and Statutory:

Section 3.12 of the *Local Government Act 1995*

Establishes mandatory procedures for making local laws, including:

1. Council initiates the process by giving local public notice.
2. Minimum 6-week submission period.
3. Copy provided to the Minister.
4. Council considers submissions and may make the Local Law by absolute majority.
5. Law is then gazetted.
6. Explanatory memorandum is sent to the Joint Standing Committee on Delegated Legislation.

Risk related:

Section 3.16 of the *Local Government Act 1995* requires that local laws be reviewed within a period of 15 years (used to be 8 years) after the day on which a local law commenced or a determination in respect of the local law was last made. If no determination is made by Council in respect of the review of the local law within the applicable 15-year period (in 2025 it was 8 years) the local law is repealed at the end of that period.

The current local law was reviewed in 2023, as were most of our other local laws. If this local law is not reviewed and re-made in 2026 it will automatically be repealed.

If Council chooses to delay the making of this amended local law there would be moderate reputational and compliance risks.

This report mitigates the risk.

Workforce related:

Nil.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM150/07/26

MOVED Cr S Van der Heyden

SECONDED Cr J Prater

That Council, pursuant to the provisions of section 3.12(3)(a) of the *Local Government Act 1995*, gives local public notice stating that it proposes to make the *Shire of Toodyay Fencing Local Law 2026*, the purpose and effect of which are:

Purpose: To prescribe minimum standards for sufficient fences and to regulate the construction, maintenance and materials of fences within the district so as to ensure safety, amenity and consistency with applicable legislation.

Effect: To establish—

- (a) requirements for the construction and maintenance of dividing and boundary fences;
- (b) circumstances in which approval is required for certain types of fencing;
- (c) standards for fencing materials, including electrified and razor wire fencing; and
- (d) obligations of owners and occupiers in relation to fences.

Voted For: Crs M McKeown, M Dival, R Madacsi, S McCormick, R Mills, J Prater and S Van der Heyden

Voted Against: Nil

MOTION CARRIED 7/0 BY ABSOLUTE MAJORITY