

## Dividing Fences adjoining Council land Policy and Procedures

### 1. Purpose

The purpose of this document is to provide a Council policy on the application of the *Dividing Fences Act 1991* with regard to Council’s obligations, liabilities and procedures.

### 2. Objectives

The objectives of the policy are:

- To ensure compliance with the requirements of the *Dividing Fences Act 1991*;
- To disclose how the *Dividing Fences Act 1991* operates with regard to Council’s liabilities for dividing fences adjoining Council land;
- To limit Council’s liability against potential claims; and
- To develop procedures transparent for applicants requesting contributions and advice to residents.

### 3. Definitions

Definitions having specific meaning under this policy are:

**public reserve** means:

- (a) a public park, or
- (b) any land conveyed or transferred to Council under Section 340A of the *Local Government Act 1919* , or
- (c) any land dedicated or taken to be dedicated as a public reserve under Section 340C or Section 340D of the *Local Government Act 1919* , or
- (d) any land dedicated or taken to be dedicated under Section 49 or Section 50, or
- (e) any land vested in Council, and declared to be a public reserve, under Section 37AAA of the *Crown Lands Consolidation Act 1913* , or
- (f) any land vested in Council, and declared to be a public reserve, under Section 76 of the *Crown Lands Act 1989* , or

<b>Doc distribution</b>	Internal	<b>Doc status</b>	Final	<b>File No</b>	CY00068/6 2014/062336
<b>Document owner</b>	Dir. Operations	<b>Contact officer/s</b>	Ian Taylor		
<b>Approval date</b>	8/4/2014	<b>Approved by</b>			
<b>Effective date</b>	8/4/2104	<b>Review period</b>	3 year	<b>Review date</b>	8 April 2017
<b>History of Approved Versions</b>					
<b>Version</b>	<b>Effective date</b>	<b>Summary of changes</b>			
1.0	8/4/2014	New policy			

- (g) a Crown reserve dedicated or reserved:
- (i) for public recreation or for a public cemetery, or
  - (ii) for a purpose that is declared to fall within the scope of this definition by means of an order published in the Gazette by the Minister administering the *Crown Lands Act 1989*, being a Crown reserve in respect of which a Council has been appointed as manager of a reserve trust for the reserve or for which no reserve trust has been established, or
- (h) land declared to be a public reserve and placed under the control of a Council under Section 52 of the *State Roads Act 1986*, or
- (i) land dedicated as a public reserve and placed under the control of a Council under Section 159 of the *Roads Act 1993*, and includes a public reserve of which a Council has the control under Section 344 of the *Local Government Act 1919* or Section 48, but does not include a common.

**public road** means:

- (a) any road opened or dedicated as a public road, whether under this or any other Act or law, and
- (b) any road declared to be a public road for the purposes of the *Roads Act 1993*.

## **5. LEGISLATIVE FRAMEWORK**

The applicable legislation governing Council obligations for dividing fences are:

- *Dividing Fences Act 1991*
- *Local Government Act 1993*
- *Roads Act 1993*

## **6. POLICY STATEMENT**

Section 25 (1) of the *Dividing Fences Act 1991* exempts Council from liability in respect to dividing fences on land vested in Council for the purposes of a public road, public park or public reserve.

Council therefore, does not contribute towards the cost of fencing on the boundaries of:

- public roads (inclusive of lanes or pathways),
- public reserves including most drainage reserves by reason of Section 49 and Section 50 of the *Local Government Act 1993* and
- most public garden and recreation spaces, unless there are special circumstances.

Special circumstances are limited to cases of demonstrated hardship and where it is deemed in Council's own interest to have a boundary fence.

Council generally will contribute up to 50% of the cost of a standard fence, on the common boundary of Council's other properties, such as:

- Car parks unless the land on which the car park is located is a public reserve as defined in the *Local Government Act*, or.
- Libraries, community centres and baby health centres unless built within a public reserve as defined in the *Local Government Act*.

The standard for a sufficient dividing fence for the purposes of this Policy is considered a timber paling fence with a maximum height of 1.8 metres.

Applicants may construct other more expensive fences. However, Council's contribution will be limited to 50% of the standard fence. Applicants will be required to pay any additional costs.

## **7. IMPLEMENTATION**

Operations Department is responsible for the implementation of the Dividing Fences Policy adjoining Council land.

The procedure for Dividing Fences adjoining Council land is outlined in **Attachment 1**.

Procedural matters are:

- Determining eligibility and
- Contribution process, approval, construction and payment.
  - Requesting a claim for contribution.
  - Construction approval.
  - Requiring a fence of different standard.
  - Payment.

# ATTACHMENT 1

## Procedure for Dividing Fences adjoining Council land

- Determining Eligibility.

**Council owned land that is not eligible for Council contribution towards dividing fences adjoining private properties.**

Council' obligations are set out under Section 25 of the *Dividing Fences Act 1991*:

*“Council is exempt from contributing to the cost of dividing fences being constructed on the common boundaries where the land held by Council is for the purposes of a public road, public park or public reserve including most drainage reserves by reason of Section 49 and Section 50 of the Local Government Act 1993 and most public garden and recreation spaces unless there are special circumstances.”*

Special circumstances are limited to cases of demonstrated hardship and where it is deemed in Council's own interest to have a boundary fence.

**Council owned land that is eligible for Council contribution towards dividing fences adjoining private properties**

Council generally will contribute up to 50% of the cost of a standard fence. This is applicable to the common boundary of Council's other properties such as car parks, libraries, community centres and baby health centres unless the land on which the facility is located within is a public reserve as defined in the *Local Government Act*.

A sufficient dividing fence is considered a timber paling fence with a maximum height of 1.8 metres. Applicants may construct other more expensive fences. However, Council's contribution will be limited to 50% of the standard fence. Applicants will be required to pay any additional costs.

- Contribution process, approval, construction and payment
  - Requesting a claim for contribution

Adjoining land owners (Applicants) are required to place their request in writing.

If eligible, within 5 working days of receipt of the application, Council staff will conduct an inspection to assess the condition of the fence and warrant for replacement.

Council will reply advising the outcome of the inspection and request submission of three (3) written quotes from recognised fencing contractors for Council's consideration.

- Construction Approval

Council will confirm, in writing, the acceptance of a quotation. Only then can construction of the fence commence.

- Requiring a fence of different standard

Council will contribute 50% only of the cost of the lowest quote for a timber paling fence to a maximum height of 1.8 metre.

Should Applicants select a different type of fencing, they will be required to pay any additional costs.

- Payment

Applicants are required to notify Council of completed construction of the fence and arrange for an inspection.

Council will conduct an inspection of the fence to satisfy workmanship and compliance with works. This inspection maybe conducted with the applicant on request.

The Applicant is required to notify the contractor to split the invoice as per amounts indicated on the written acceptance from Council. For probity reasons, Council is not permitted to pay monies to the public or owner directly.

On satisfactory completion, the Applicant is responsible for payment to the contractor for their contribution. Council is responsible for payment of its agreed contribution directly to the Contractor.