

Fencing Policy



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RESPONSIBLE EXECUTIVE General Manager Infrastructure and Open Space
POLICY TYPE Operational
POLICY OWNER Manager Property Services

REVISION RECORD	Version	Revision Description
24 November 1997	1	New policy
10 December 2018	2	Reviewed

1. Purpose

The purpose of this Policy is to set out clear responsibilities relating to the contribution of costs for the construction, maintenance, and replacement of a dividing fence adjoining Council owned or managed land (including roads). This Policy takes into account the relevant requirements under the *Fences Act 1968* (Vic), and the *Road Management Act 2004* (Vic) and other laws where applicable.

2. Scope

This Policy applies to all landowners where their property adjoins Council owned or managed land and who seek a Council contribution to the cost of construction, repair, or replacement of a dividing fence.

3. Governance Principles and Council Plan alignment

3.1 Governance Principles

This Policy aligns with the following governance principles:

Principle (a) - Council actions are to be made and actions taken in accordance with the relevant law.

Principle (i) - the transparency of Council decisions, actions and information is to be ensured.

3.2 Council Plan Alignment

Strategic Direction: Well-governed - Council will be collaborative, accountable, transparent, responsive, well-informed, and efficient.

Strategy: Focus all of our decision-making on the long-term best interests of the Kingston community.

Strategy: Look after the community's financial resources responsibly and efficiently.

4. Policy Details

4.1 Legislation

4.1.1 Fences Act

The *Fences Act* requires owners of land to contribute in equal proportions to fencing works dividing land unless certain exemptions apply.

Section 4(2)(c) of the *Fences Act* states that the definition of "owner" for the purposes of the *Fences Act* does not apply to:

"A municipal council, trustee or other person or body in respect of land owned by or vested in, or under the care, control or management of, the municipal council, trustee, person or body for the purposes of a public park or public reserve."

Notably, the terms public park or public reserve are not defined in the *Fences Act* but would have their common meaning.

4.1.2 Road Management Act

Clause 4 of Schedule 5 of the *Road Management Act 2004* states:

"Despite any Act or rule of law to the contrary, neither the Crown nor a road authority is required to fence or contribute to the fencing of any portion of a road".

Therefore, where Council is the relevant road authority, it is not required to fence or contribute to the fencing of any portion of its road.

4.2 Exclusions

Council will not contribute to:

- Land not owned or managed by Council.
- Crown land and foreshore reservations under the Committee of Management of Council.
- Road and road reserves, laneways, rights of ways, or walkways (except where a walkway forms part of a public reserve or public park under section 4.3 below).
- A public reserve which is set aside as a tree or plantation reserve.
- Drainage reserves.
- Municipal car parks designated as such under the *Road Management Act*.
- Pool fencing unless the pool fencing forms part of a dividing fence and then only in accordance with section 4.3 below.
- Any other public parks and public reserves not mentioned below in *section 4.3*.

Where the land description is unclear, Council will refer to the title or title plan.

4.3 Inclusions

Council recognises that it is fair and equitable to share the cost of fencing replacement of a standard fence where a private property adjoins a public park or public reserve other than those excluded under *section 4.2* of this policy. Council will only contribute to replacement costs, not maintenance costs, as per *section 4.4* and will determine at its discretion if the fence requires replacement.

4.4 Council contribution to section 4.3 Inclusions

Council will contribute a flat per lineal metre rate for the demolition, construction, disposal, and any other associated costs for a standard fence. The rate will be calculated using the average cost from three (3) fencing contractor invoices paid by Council in the preceding 12 months, divided by 2. The rate will be published on the Council website and is subject to annual review.

A standard fence will be a timber paling fence of no more than 1.95 metres in finished height (palings, posts, and plinth). Construction standard and materials will be in accordance with the accepted industry standard.

Council will not contribute to gates, trellis, enhancement, painting or decorative features. Should the owner of the adjoining land elect to install a gate, Council reserves the right to request the removal for future development, if required.

4.5 Council contribution to land not excluded under Fences Act 1968 (Vic) S 4(2)(c)

Council will contribute in accordance with the Fences Act.

4.6 Permits, Planning Schemes, Boundary Survey

It is the private property owner's responsibility to ensure that the fence construction complies with all relevant Council requirements, permits, restrictions, planning schemes, standards, or acts.

Should a boundary survey to define the common boundary be required, a licensed surveyor will be engaged to conduct a boundary survey / title re-establishment survey. Where the common boundary is the dividing fence between private land and a public park or public reserve, the private property owner is required to engage a licensed surveyor to conduct the survey at the owner's cost.

5. Key Stakeholders (if applicable)

This policy includes the following stakeholders.

- Infrastructure Department
- Legal Department
- Property Services Department
- City Works Department

6. Internal and External Assessments

6.1 Risk Assessment

This policy has been assessed by the relevant department and is considered low risk.

6.2 Delegation and Authorisation (Compliance Framework)

There are no delegated positions with responsibilities for this Policy.

6.3 Gender Impact Assessment

A Gender Impact Assessment is not required for this Policy.

6.4 Privacy Impact Assessment

A Privacy Impact Assessment is not required for this Policy.

6.5 Human Rights Charter

This policy has been reviewed against and complies with the Charter of Human Rights and Responsibilities Act 2006. Property rights are a human right under the charter which states that a person must not be deprived of his or her property other than in accordance with law.

7. Roles and Responsibilities

Role	Responsibility
Administration Officer – Building Infrastructure or City Works	Review shared fencing applications and complete.

8. Related documents

8.1 Legislation

- Fences Act 1968 (Vic)
- Local Government Act 1989 (Vic)
- Road Management Act 2004 (Vic)

8.2 Documents and resources

- AS1926.1 Swimming pool safety barriers for swimming pools
- Community Local Law

9. Definitions

Term	Definition
Fence	Has the same meaning as in the Fences Act 1968 (Vic)
Road Authority	Has the same meaning as in the Road Management Act 2004 (Vic)