



Half Cost Fencing Policy–Property Abutting Council Land

Purpose

This policy provides details of when Council will contribute to half cost of the replacement of existing fencing on a property boundary where the abutting Council land is a public park or reserve.

Governance Principles

Section 9 of the Local Government Act 2020 (the Act) specifies the overarching governance principles and supporting principles that Council must adhere to in the performance of its role and functions.

This policy gives effect to the following overarching governance principles outlined in Section 9(2) of the Act:

- Council decisions are to be made and actions taken in accordance with the relevant law;
- The transparency of Council decisions, actions and information is to be ensured.

This report also takes into account the following supporting principles defined in Section 9(3) of the Act:

- The public transparency principles (Public Transparency Policy);
- The financial management principles; and,
- The service performance principles.

Definitions

“Infrastructure” includes a playground, building or installation that can be expected to attract public use of the area where it has been constructed. It does not include a footpath, road, drainage retardation basin, service installation (eg. Electricity sub-station) etc.

Scope

This policy applies in the whole of the Baw Baw Shire Council municipal district.

Legislative context

The *Fences Act 1968 (Section 7)* (the Act) states that “as a general principle owners are liable to contribute in equal proportions to a sufficient dividing fence”. However, Section 4(2)(C) of the Act states that the term “Owner” does not include a municipal council for the purposes of a park or reserve.

Accordingly, Councils are not required by legislation to pay half the cost of fencing when the land is a public park or public reserve.

Related policies and documents

- Not applicable

Policy principles

Baw Baw Shire Council accepts the fact that certain infrastructure will attract public use and may have an impact on the privacy of the abutting private residential property.

Council will contribute to the cost of replacing or repairing (unless it has been damaged by the property owner) a fence where it is obliged to under the provisions of the Fences Act 1968.

In addition, where the Council land is a public park or public reserve and no planning permit condition restricts the construction of fencing, Council will also contribute 50% of the cost despite the exemption provided by S4(2)(C) of the Fences Act 1968 where Council deems the following assessment criteria is met:

Assessment Criteria

- Council is of the view that the fence has deteriorated to the point that it needs to be replaced; and,
- The abutting private land is residential.

And either of the following is true;

- The abutting park or reserve (not including a road reserve) contains “infrastructure” within 40m of the boundary with the private property; or,
- The abutting Council owned land forms a pedestrian link that concentrates public use of the reserve and is less than 10m wide adjacent to the private property and is not a road reserve.

Policy detail

- In residential areas;
 - If the assessment criteria is met, the standard of fence that Council will contribute towards is a standard treated pine timber paling fence with a maximum height of 1950mm (1.8m palings with a 150mm plinth); or,
 - If a property owner wants a fence that varies from this standard Council will only contribute 50% of the cost of a standard paling fence.
- Council will only contribute towards the cost of a fence under this policy if it has agreed to do so before the fence is constructed.
- If vegetation is required to be removed to construct or replace a fence, Council will not contribute to the removal of vegetation on the private property side of the fence. Council will remove or contribute to the removal of vegetation on the Council side of the fence.
- Owners do not have a right to install any gates on a private property boundary that abuts a Council reserve, i.e. parks, playgrounds, etc.
 - Applications to install a pedestrian gate will be considered provided that there is no risk to the safety or health of the public and no detriment to the interests of Council and its services.
 - Only a single pedestrian gate (maximum width of 1m) may be approved as vehicle access is prohibited on Council reserves. Any costs involved with the erection of a gate shall be wholly at the owner's expense.
- It is the property owner's responsibility to ensure that a dividing fence is constructed on the property boundary. Fences must not encroach upon Council property.
- Sometimes a property will have a covenant on the Certificate of Title that restricts the type of fence that may be constructed. Where such a covenant exists then the standard of fence described in the covenant must be complied with. Irrespective of whether a covenant exists relating to fencing, Council will only contribute half the cost of a standard treated pine timber paling fence as described in this policy.
- Council will only contribute to the cost of fencing if the work is completed by an approved contractor.

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Responsible Director	Community Infrastructure
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