

# PERMANENT FENCES ON ROAD RESERVE

## 1. Introduction

1.1 The purpose of this Policy is to regulate the erection of permanent fences on the road reserve and the occupation of the enclosed land.

1.2 This Policy does not apply to State Highways.

1.3 This Policy shall apply to all new and existing permanent fences on road reserve and the occupation of the enclosed land from the date of its adoption by Council.

## 2. Law

2.1 The occupation of road reserve can only be granted in the form of an informal licence which has no legal status.

2.2 Note:

Local Government Act 1974. Section 357 - Damage to Roads

Every person commits an offence who, not being authorised by the Council, or by or under any Act, -

(a) Encroaches on a road by making or erecting any building, fence, ditch or other obstacle or work of any kind upon, over, or under the road, or by planting any tree or shrub thereon; or

(b) Causes or negligently allows any retaining wall, foundation wall; or **fence** erected on any land; or any batter or slope of earth, or any building, erection, material or thing, to give way or fall so as to hamper or obstruct a road.

## 3. Council Approval

3.1 In most cases the actual position of the road's legal boundary is difficult to locate. For the purposes of this Policy the position of the road reserve boundary shall be informally located using any of the following methods:

- 1 Survey Pegs (unlikely)
- 2 Cadastral map and aerial photograph computer systems
- 3 Measuring 20m from the opposite fence line
- 4 Measuring 10m from the carriageway centreline
- 5 Sighting along adjacent fence lines
- 6 The crest or toe of road embankments

3.2 Persons wishing to erect a fence and occupy land on road reserve shall apply to the Council in writing for permission to do so. Approval may be provided when any road safety issues can be mitigated, no undue public inconvenience is caused and when there are no disadvantages to the Council. Approval will generally be considered only for low traffic volume roads. Appropriate conditions will be applied to each approval.

3.3 The approval will be granted in the name of the adjoining land owner (the occupier) and successors in title, who shall be personally responsible for ensuring all conditions of the approval, are complied with.

3.4 Approval shall be in the form of a letter of approval from the Council. The approval may be amended or revoked by the Council at any time. If revoked the occupier shall immediately remove the fence and cease occupation of the road reserve without compensation.

3.5 Council approval must be granted before any physical works commence.

3.6 The occupier shall at all times indemnify the Council in respect of any loss, damage or expense suffered or incurred by the Council as a direct or indirect consequence of any act, error or omission by the occupier and for which the occupier is legally liable.

3.7 The occupier shall take out and maintain at his own cost, for the duration of the approval, Public Liability insurance for an amount of not less than \$2,000,000. All such insurance shall be for such terms and with such insurers as the Council may reasonably require. The occupier shall, if reasonably requested by the Council, provide evidence that the insurance required is in force and current premiums are paid.

3.8 Any costs incurred by the Council arising from this Policy shall be recoverable from the occupier by the Council as a debt.

#### **4. Location**

4.1 Occupation of the road reserve will only be permitted where the applicant also owns the adjoining land.

4.2 Occupation of road reserve will not normally be permitted on both sides of the road.

#### **5. Fence Setting Out and Construction**

5.1 The applicant shall contact all utility providers to determine the presence and location of underground services, (for example; power, telephone, water) and also land survey marks. The applicant shall be responsible for any damage done to underground services and survey marks.

5.2 Fences must generally be a minimum of 5.0 m from the carriageway edge; however a lesser setback distance may be permitted in some instances, for example:

- 1 Presence of embankments at the 5m offset.
- 2 Presence of underground utilities at the 5m offset
- 3 Remote location / very low traffic volumes

5.3 The proposed alignment of the fence shall be pegged for inspection by a Council officer as part of the approval process. The Council shall take account of issues including, but not limited to, vehicle sight distance, distance from existing accessways, drainage, location of underground utilities, traffic and pedestrian safety, and possible future upgrading of the road.

5.4 Fences shall be of a post and wire (or netting) type, as generally described for rural boundary fence purposes in Schedule 2 of the Fencing Act 1978. Barbed wire and electrified wire shall not be used where they may cause a nuisance to other the road verge users, for example pedestrians and horse riders. No stays or tie-backs shall project outside the pegged fence line approved by the Council.

5.5 Gates and fencing shall be erected and maintained by the occupier in a workmanlike manner using durable materials. The occupier shall carry out any maintenance requested by the Council. If not carried out in a timely manner the Council may carry out the work at the occupier's expense.

5.6 No shade cloth or other screening material shall be placed on the fence so as to limit vehicle sight distance.

5.7 Gates shall be located on the true road boundary line with the fence returned to them. The installation of new gates will require a separate approval of the Council.

5.8 The Council may require reflectorised hazard markers to be attached to posts near corners etc.

#### **6. Use and Care of Fenced Off Land**

6.1 The land shall be used for pastoral purposes only and shall not be disturbed to a depth greater than 200mm.

6.2 The land shall be kept clear of noxious and brush weeds.

6.3 No structure, farm implement or fodder etc. shall be placed or stored on the land so as to limit vehicle sight distance.

6.4 The fence owner shall take all practical precautions to prevent erosion, scour, inundation etc. and if this does occur the Council must be immediately notified.