

# Boundary Fence Management Policy



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Responsible Manager	Manager Civil Assets
Other key internal stakeholders	Director Assets & Environment Director Community and Cultural Development Manager City Development
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## 1. PURPOSE

The purpose of this policy is to set out clear responsibilities for the construction, repair and replacement of boundary fencing where they adjoin Council owned property.

This policy assists in ensuring that all applications for Council assistance regarding boundary fencing work are dealt with in a fair and consistent manner and at a known cost to Council.

For information relating to Council's responsibility in regard to Entrance Statement Structures please refer to Council's Signage and Entrance Statement Policy.

## 2. POLICY

This policy will not be applicable when Council's actions cause damage to any fence or cause a need for fencing work to be carried out. In these instances Council, either directly or through its insurers, may seek to repair the damaged fence, after each situation is assessed against the facts of the matter.

### 2.1 Standard Fencing

The City of Tea Tree Gully generally considers a standard or adequate fence, as defined in The South Australian Fences Act 1975 (the Act), to be pre coloured steel fence of between 1.5 to 2 metres in height.

Standard fences in the Golden Grove Policy Area are considered to be of brick, timber, brush or pre coloured steel materials.

### 2.2 South Australian Fences Act 1975 and Fences Regulations 2018 Council and Crown exemptions under the Act and Regulations

Under the Act and the subordinate South Australian Fences Regulation 2018 (the Regulations) Councils and agencies of the Crown have a number of exemptions to contributing towards the costs associated with the construction of a new fence, or the repair or replacement of an existing fence which adjoin Council land.

Under the Act Council is obligated to contribute half of the cost of the construction, repair and replacement of a standard fence, which adjoins a Council owned property unless the adjoining Council owned property is:

- a. a single parcel of land of more than one hectare in area
- b. a public road or road reserve
- c. land held for the purposes of controlling access to a road or proposed road from land abutting the road or proposed road
- d. land used solely or principally for the purpose of drainage

*(Fences Act – Section 20, point 1-3 and Fences Regulations – Section 3, points a and b)*

### Fences adjoining walkways

Under the Act a Public Road means “a road or thoroughfare to which the public has access” (*Fences Act - Section 4, point 1*). This definition includes Council owned public walkways as these are thoroughfares to which the public has access. Therefore Council is exempt from sharing any costs associated to the construction of a new fence, or the repair or replacement of an existing fence which adjoins a walkway.

### Fences adjoining Tree Screens

For the purpose of this Policy a Tree Screen is recognised as *land held for the purposes of controlling access to a road or proposed road from land abutting the road or proposed road* and therefore Council is exempt from contributing to fencing works under the Act.

### Other exemptions under the Act and the Regulations

Council will not contribute to the costs associated with the repair or replacement of any damaged section of a fence adjoining a Council owned property where damage has occurred through the action or neglect of the private property owner or occupier (past or present, including their agents) (*Fences Act - Section 16, point 3*).

Where a landowner proposes a fence, which in Council’s opinion, exceeds a standard or adequate fence, the contribution payable will be limited to no more than would have been payable by Council for a standard fence (*Fences Act - Section 12, point 7*).

Council will not be liable for any costs associated with the construction of a new or replacement fence where fencing works have commenced without Council's prior written approval in accordance with the Act, (with the exception of urgent repairs associated with the damage / destruction of an existing fence). (*Fences Act - Section 16, point 1*).

## 2.3 Asbestos Fences

Council acknowledges the potential additional hazard posed by asbestos fencing which adjoins Council owned land.

Council will therefore, upon application from the property owner, contribute half the costs associated with the removal and replacement of any asbestos fence that adjoins Council owned land, regardless of the area of the Council adjoining land, in order to assist the adjoining property owner in removing the potential hazard, thus protecting the public.

## 2.4 Council’s fencing requirements

### Brush fencing

A new or replacement brush fence cannot be erected within three metres of an existing or proposed dwelling unless the dwelling has appropriate fire resistance measures as prescribed in the National Construction Code (the Code).

Existing brush fences can be repaired, but not replaced with another brush fence unless the fire resistance measures of the building are appropriate and in accordance with the Code.

Council will generally not support the construction of new, or the like for like replacement of timber or brush fences (where allowable) due to the ongoing maintenance costs and increased fire risk posed by these styles of fence. Council will support the use of pre coloured steel fencing in any of its common forms.

Council, where obligated under the provisions of the Act, will contribute to the repair of existing brush fencing.

Council will not support co funding of any fence that has post and rails exposed to the adjoining Council public reserve area. In these instance the post and rails must be either on the private property side or not used at all.

### Retaining walls, plinths and other associated structures

Council will not contribute to the construction of new retaining walls or the repair and replacement of any retaining walls, concrete plinths or any other structure intended by a landowner to extend the usefulness or enjoyment of private land and where there is no direct benefit to the Council owned land.

Further information relating to the attributing of costs associated with the construction or management of retaining walls, plinths and other structures can be found by visiting the Legal Commission of South Australia's (the Commission) [website](#).

Entry Statements Walls will be managed in accordance with Council's Signage and Entrance Statements Policy which should be read in conjunction with the provisions of this policy.

### Gates

Council will not contribute to the construction of new gates, or the repair or replacement of existing gates to private properties as these are seen as solely for the benefit of the private property.

### New or replacement fence colour and style

Council will seek to ensure new or replacement fences are consistent in colour and style to those which adjoin or are adjacent to the new or replacement fence to provide a consistent visual aesthetic and maintaining or enhancing the character of the area.

### Development approvals

In some instances new or replacement fences will require development approval.

All new and replacement fences in the Golden Grove East Policy Area 14, Golden Grove Residential Policy Area 15 and the Golden Grove South Policy Area 16 require development approval prior to their construction or replacement.

Standard development application fees do not apply for fences which satisfy the Development Plan complying criteria within the City of Tea Tree Gully Development Plan (the 'Development Plan'). Standard development application fees are required for fences requiring an on-merit assessment against the relevant provisions of the Development Plan.

In some instances, non-standard fences, fences placed on top of a retaining wall and fences and/or retaining walls over a prescribed height will also require development approval.

Applicants will need to check that there are no encumbrances on the property to prevent the construction of a front fence (not a corner block).

The lodgement of all required development applications and other permits shall be the responsibility of the applicant.

Further information relating to when development approval is required is available on Council's [website](#) or by contacting Council's City Development Department.

## 2.5 Applications for Council contribution

### Application process

Applications for Council contribution towards fencing costs must be made in writing and in accordance with the Act.

Information pertaining to this process is provided by the Commission and is readily available on their website.

Following receipt and consideration of a fencing application (where Council may be obligated to contribute under the Act), Council may conduct investigations to determine the most cost-effective way of completing the proposed works or resolving problems relating to the work.

Any objections to the fencing works including costs or suggestion to vary the fence style, type or design must be made in writing and in accordance with the Act.

It is considered that the applicant will assume responsibility for the fencing work.

### Supporting information to be provided

In accordance with best practice purchasing processes Council requires that all applications, where a third party contractor is proposed to be used for the construction of a new fence or replacement of an existing fence, include at least three formal written quotations to ensure value for money is being achieved. As a minimum, quotations should include:

1. an itemised cost breakdown for labour, fencing materials and the disposal of waste materials (where applicable e.g. fence repair or replacement works)
2. a description of the works to be completed including location, style, height and colour of fence to be constructed and any other inclusion and exclusions

Quotations provided for fencing works should be from reputable, recognised and registered fencing contractors or builders.

In accordance with Section 4 of the Act costs may also be claimed for any work reasonably required to facilitate the complete of the work. Such costs may include: survey and clearing and disposal of vegetation that may be impeding access to the area etc.

In instances where a landowner proposes to complete the fencing works themselves these application should include at least three formal written quotation for the supply of all fencing materials as well as an allowance for the disposal of the existing fence (where applicable).

Under Section 4 of the Act the applicant may include a reasonable allowance for their labour to complete fencing works. Where a contribution for labour is sought a cost for labour must be submitted as part of the application for the consideration of Council. Council considers a reasonable cost for labour, for fencing work completed on a standard fence, to be no more than \$25 per metre of fencing.

Any person who receives a contribution from Council, for their labour for fencing work will not be deemed to be an employee or contractor to Council, but rather as a property owner who is performing work on their own property to which Council is obligated to contribute under provisions of the Act.

Additional information may also be required if access to Council owned land is required to complete fencing works. This information may include, but not limited to, evidence of appropriate insurances and a Council issued permit for access over a council reserve.

### Payment of Council contribution

Council's contribution will only be payable upon completion the fencing work to the satisfaction of the responsible Council Officer.

Any failure of the applicant to meet the requirements of the Act, the associated Regulations or this Policy may result in Council refusing to contribute funds.

## 2.6 Hazardous Fences

Where Council becomes aware of a fence that due to its condition presents a hazard to the public, Council may initially request the owner to implement the necessary remedial works to remove the hazard. If the owner fails to satisfy Council's request the authorised officers of Council may take the appropriate action to resolve the matter, which may include using its powers under the Fences Act 1975, Local Government Act 1999, Public Health Act 2011 or through the use of expiation notices or other legal action.

Council's Authorised Officers may instigate fence repair, replacement or removal work where an existing fence is considered to not be fit for purpose or adequate. In instances where no fence is present Council's Delegated Officers may instigate the construction of a new fence provided the principles of this policy are adhered to and the works are notified and completed in a manner that complies with the Act.

## 2.7 Boundary fences between two privately owned properties

Council will generally not become involved in civil issues or disputes relating to boundary fencing between two separate parties, other than Council. Council may become involved in a boundary fence dispute where the dispute is found to relate to a potential breach of a planning or development approval or the requirements under any relevant legislation.

### 3. DEFINITIONS

For the purposes of this policy the following definitions apply:

#### The Act

Fences Act 1975

#### Boundary Fence

A dividing fence where:

1. The fence line follows the actual surveyed boundary between Council owned reserves/land and adjoining land that is privately owned
2. While not situated on the actual surveyed boundary (for reasons of topography or practicality), follows a mutually agreed give or take fence line.

#### Council owned land

Land which is directly owned by Council, is vested to Council or under Council's care and control.

#### Public Road

A road or thoroughfare to which the public has access.

#### Entrance Statement Structure

An Entrance Statement Structure for the purpose of this policy is a fence or a wall (usually constructed of brick or other masonry materials, sometimes faced with a plastered render which can also be painted), located at the entrance to a street or road that identifies the name of the street or road. They usually have a street name affixed to the structure. An Entrance Statement Structure often forms part of the Boundary Fence of the adjoining land. These fences may include steel or timber decorative treatments on top of the walls.

Council also maintains a Signage and Entrance Statements Policy which should be read in conjunction with the provisions of this policy for matters relating to these structures.

#### Fencing Work

The construction of a new or the replacement, repair or maintenance of an existing fence.

#### Walkway

A thoroughfare to which the public has access and is under Council's care and control.

#### Tree screen

Tree screens are extended areas of planted garden beds and are generally located between privately owned properties and arterial roads, collector roads or distributor roads.

#### Golden Grove Policy Zones

The Golden Grove Policy Zone includes areas within the suburbs of Golden Grove, Greenwith and a majority of Wynn Vale and minor portions of Surrey Downs and Modbury Heights.

#### Golden Grove East Policy Area 14

The area known as The Settlement Estate

### Golden Grove Residential Policy Area 15

Includes areas within the suburbs of Golden Grove, Greenwith and a majority of Wynn Vale and minor portions of Surrey Downs and Modbury Heights.

### Golden Grove South Policy Area 16

The area known as Parkwood Estate

## 4. LEGISLATIVE FRAMEWORK AND OTHER REFERENCES

There is no legislative requirement for Council to have a policy relating to this area.

The following legislation applies to this policy:

### Local Government Act 1999

This Act grants Council extensive powers under which it may carry out road works (including maintenance to fences on roads), but does not oblige Council to do so.

### Fences Act 1975

This Act provides for the erection, replacement, repair and maintenance of fences.

### Fences Regulations 2018

Regulation 3 states:

Pursuant to section 20(3) of the Fences Act 1975, the following classes of land are exempt from the provisions of that Act:

- a. land held by the Commissioner of Highways or any council for the purposes of controlling access to a road or proposed road from land abutting the road or proposed road;
- b. land of, or used by, the Crown, an instrumentality or agency of the Crown or a Council that is used solely or principally for the purpose of drainage.

### Encroachments Act 1944

This Act provides for the adjustment of boundaries where buildings or walls encroach on adjoining land, and facilitates the determination of boundaries.

### Development Act 1993 and Development Regulations 2008 / Planning, Development and Infrastructure Act 2016

Any fence (including fence/retaining wall combinations) that is over 2.1 metres in height is subject to development approval under this Act. In some zones (i.e. Hills Face Zone, Flood Zone, Golden Grove Residential Zones etc.), fences that are under 2.1 metres in height also require development approval. A masonry fence that is over one metre in height requires development approval. Fences may also be covered by encumbrances ensuring certain standards are consistently met. Council does not administer encumbrances except those to which it is a party

and it does not administer those for the Golden Grove Development Area, which are registered by the Urban Renewal Authority and its antecedents.

Council’s Residential Zones are detailed in Tea Tree Gully’s Development Plan which is available on Council’s website.

### Civil Liability Act 1936

Section 42 of this Act provides that Council does not have any liability in tort for failure to repair or maintain a road (including structures associated with a road) or to take other action to avoid or reduce the risk of harm that results from a failure to maintain, repair or renew a road.

### Public Health Act 2011

An Act to promote and to provide for the protection of the health of the public of South Australia and to reduce the incidence of preventable illness, injury and disability; and for other purposes.

## 4.1 Other references

Legal Services Commission of South Australia

Council’s documents including:

- a. Signage and Entrance Statement Policy
- b. Open Space Policy
- c. Fees and Charges Register

## 5. STRATEGIC PLAN/POLICY

### 5.1 Strategic Plan

The following strategic objectives in Council’s Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
<b>Environment</b>	
<i>A community that is protected from public and environmental health risks</i>	This Policy seeks to manage the potential risk associated with boundary fencing
<b>Places</b>	
<i>Streets, paths, open spaces and parks are appealing, safe and accessible</i>	Boundary fences are provided where required to enhance public safety and visual aesthetics

## 6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant Portfolio Director and managed in accordance with Council’s delegations.