



CUMBERLAND  
CITY COUNCIL

# Dividing Fences Hardship Policy

## AUTHORISATION & VERSION CONTROL

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<b>Policy Owner</b>	Director Governance & Risk
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## POLICY STATEMENT

Under Section 25 (1) of the *Dividing Fences Act 1991*, Council is exempt from liability in respect to dividing fences on land owned or managed by Council that is a public reserve, public park or such other public purposes as may be prescribed under the Act. This also includes a public road where Council is the delegated roads authority.

Special circumstances are limited to cases of an adjoining owner's demonstrated financial hardship and where it is deemed in Council's own interests to have a boundary fence erected or maintained.

Where there is substantiated financial hardship for the owner, Council will consider contributing to fencing costs in line with this Policy.

## SCOPE

This Policy applies to a dividing fence that directly adjoins Council owned or managed land that is a public reserve, public park or such other public purposes as may be prescribed under the *Dividing Fences Act 1991*. This Policy does not address disputes between neighbours over dividing fences that do not adjoin Council owned or managed land.

## DEFINITIONS

Term	Meaning
Dividing Fence	As defined by the <i>Dividing Fences Act 1991 (NSW)</i> , means a fence separating the land of adjoining owners, whether on the common boundary of adjoining lands or on a line other than the common boundary.
Fencing Work	As defined by the <i>Dividing Fences Act 1991 (NSW)</i> , means: (a) the design, construction, replacement, repair or maintenance of the whole or part of a dividing fence, and (b) the surveying or preparation of land (including the trimming, lopping or removal of vegetation) along or on either side of the common boundary of adjoining lands for such a purpose, and includes: (c) the planting, replanting and maintenance of a hedge or similar vegetative barrier, and (d) the cleaning, deepening, enlargement or alteration of a ditch, embankment or watercourse that serves as a dividing fence.
Public Reserve	As defined by the <i>Local Government Act 1993 (NSW)</i> , means: (a) a public park, or (b) any land conveyed or transferred to the council under section 340A of the <i>Local Government Act 1919</i> , or (c) any land dedicated or taken to be dedicated as a public reserve under section 340C or 340D of the <i>Local Government Act 1919</i> , or (d) any land dedicated or taken to be dedicated under section 49 or 50, or (e) any land vested in the council, and declared to be a public reserve, under section 37AAA of the <i>Crown Lands Consolidation Act 1913</i> , or (f) any land vested in the council, and declared to be a public reserve, under section 76 of the <i>Crown Lands Act 1989</i> , or

	<p>(g) Crown managed land that is dedicated or reserved—</p> <p>(i) for public recreation or for a public cemetery, or</p> <p>(ii) for a purpose that is declared to be a purpose that falls within the scope of this definition by means of an order published in the Gazette by the Minister administering the <i>Crown Land Management Act 2016</i>, being Crown managed land in respect of which a council has been appointed as its Crown land manager under that Act or for which no Crown land manager has been appointed, or</p> <p>(h) land declared to be a public reserve and placed under the control of a council under section 52 of the <i>State Roads Act 1986</i>, or</p> <p>(i) land dedicated as a public reserve and placed under the control of a council under section 159 of the <i>Roads Act 1993</i>, and includes a public reserve of which a council has the control under section 344 of the <i>Local Government Act 1919</i> or section 48, but does not include a common.</p>
Road	<p>As defined by the <i>Local Government Act 1993 (NSW)</i>, includes:</p> <p>(a) highway, street, lane, pathway, footpath, cycleway, thoroughfare, bridge, culvert, causeway, road-ferry, ford, crossing, by-pass and trackway, whether temporary or permanent, and</p> <p>(b) any part of a road and any part of any thing referred to in paragraph (a), and</p> <p>(c) any thing forming part of a road or any thing forming part of any thing referred to in paragraph (a).</p>
Roads Authority	<p>As defined by the <i>Roads Act 1993</i> – Section 7:</p> <p>(1) TfNSW is the roads authority for all freeways.</p> <p>(2) The Minister administering the <i>Crown Land Management Act 2016</i> is the roads authority for all Crown roads.</p> <p>(3) The regulations may declare that a specified public authority is the roads authority for a specified public road, or for all public roads within a specified area, other than any freeway or Crown road.</p> <p>(4) The council of a local government area is the roads authority for all public roads within the area, other than—</p> <p>(a) any freeway or Crown road, and</p> <p>(b) any public road for which some other public authority is declared by the regulations to be the roads authority.</p> <p>(5) A roads authority has such functions as are conferred on it by or under this or any other Act or law.</p>

## OBJECTIVES

**Consistency:** The Policy clearly outlines the eligibility criteria and requirements for a financial hardship application, and the level of support that Council will provide for.

**Transparency:** The Policy addresses the approach Council Officers will undertake to make an assessment and determination of financial hardship requests.

**Equity:** The Policy applies to land owners residing within the Cumberland LGA that are experiencing financial hardship when erecting new or replacement dividing fences adjoining Council owned or managed land for a public reserve, park and road.

## REQUIREMENTS

Financial hardship requests must be submitted to Council on the required application form for assessment and approval, prior to undertaking any works on the dividing fence. All fencing work must comply with Council's relevant Development Control Plan or exempt development criteria.

An applicant can apply for the following:

- **Under 50 lineal metres of new or replacement fencing:** A contribution from Council to the lesser value of \$1,250 or 50% of repair or replacement costs of an ordinary 1.8 metre (180 centimetres) high paling fence.
- **Over 50 lineal metres of new or replacement fencing:** A contribution from Council to the lesser value of 25% of the total fence cost, or 25% of the installed cost of an ordinary 1.8 metre (180 centimetres) high paling fence.

Where an applicant provides a fence quotation that exceeds the standard specification of a 1.8 metre high paling fence, Council reserves the right to provide its own estimate on the ordinary fence cost and calculate the financial hardship contribution based on this estimated amount.

A maximum of one approval will be granted per property every 15 years under this Policy. Council has no liability for the ongoing repair and maintenance of any fence repaired or replaced for which financial assistance has been approved under this Policy.

### ***Eligibility***

To be eligible to apply for financial assistance under the Dividing Fences Hardship Policy, the following criteria must be met:

- a) The applicant must be the land owner of the property;
- b) The applicant must currently occupy the property;
- c) The property must be situated within the Cumberland LGA;
- d) The property must directly adjoin Council owned or managed land that is a public reserve, public park or such other public purposes as may be prescribed under the *Dividing Fences Act 1991 (NSW)*; and
- e) The property must be a residential property.

## ***Application Requirements***

- At least three written quotations for the cost of repair or replacement of the dividing fence must be provided, which document that the proposed works meet the specifications set out by this Policy;
- Photographic evidence of the fence requiring repair or replacement must be provided to Council;
- Reasons for the application;
- Financial records (e.g., recent bank statements);
- Details of all sources of income and living expenses; and
- A letter from a recognised welfare agency or financial counsellor confirming financial hardship.

Where an application has been approved:

- Council will enter into an agreement with the adjoining owner that outlines the fence work and costs to be contributed by both parties, as outlined within the Policy.
- The applicant must undertake and pay the full cost for the repair or replacement of the dividing fence.
- Final receipts/proof of payment must be submitted to Council with a covering letter.
- A signoff from the contractor that the works have been undertaken must be submitted to Council.
- Council staff will inspect the fence before and after works and may take images to place on record to ensure project completion.
- Council will fund the contribution on satisfactory completion of the fence and agreed terms.

## **RELATED LEGISLATION**

- *Local Government Act 1993 (NSW)*
- *Dividing Fences Act 1991 (NSW)*
- *Roads Act 1993 (NSW)*

## **RELATED DOCUMENTS AND COUNCIL POLICY**

- Cumberland Development Control Plan 2021