

# FENCES ACROSS WATERWAYS NEAR BRIDGES

## 1. Introduction

1.1 Many of the District's roads cross small creeks and streams. Farmers need to continue their road boundary fences across these creeks and streams. Such fences are generally erected, adjacent to but separate from bridge structures, but in some instances they are attached to bridges.

The Council recognised the difficulty of effectively fencing these sites, but is also aware that improperly designed and maintained fences can cause debris to accumulate during times of flooding which, in turn, can dam the water flow causing scour and structural damage to bridges.

The purpose of this Policy is to ensure that adjoining land owners are aware of their responsibilities and that fences erected adjacent to roads are constructed to an acceptable design and are adequately maintained.

1.2 This Policy does not apply to State Highways.

1.3 This Policy shall apply to all new and existing fences across waterways on, or adjacent to, road reserve from the date of its adoption by Council.

## 2. Law

2.1 The law pertaining to boundary fences adjoining road reserve is contained in Section 353 (c) of the Local Government Act 1974 which should read in conjunction with this Policy. (Repeated below)

353. General safety provisions as to roads— The Council shall take all sufficient precautions for the general safety of the public and traffic and workmen employed on or near any road and, in particular, shall ---

(c) Whenever the public safety or convenience renders it expedient, require the owner or occupier of any land not separated from a road by a sufficient fence to enclose the same by a fence to the satisfaction of the council.

Note also:

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 Persons wishing to erect a fence across a creek or stream adjacent to the road reserve need not apply to Council for permission provided all of the requirements of this Policy are complied with.

3.2 Persons wishing to erect a fence across a creek or stream attached to a bridge, or other road structure, shall apply to the Council in writing for permission to do so. Appropriate conditions will be applied to each approval.

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

3.4 Council approval shall be in the form of a letter of approval. The approval may be amended or revoked by the Council at any time. If revoked the fence will be immediately removed by the owner without compensation.

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

3.6 The owners of fences erected under Clauses 3.1 and 3.2 of this Policy shall be responsible for any loss, damage or expense incurred by the Council as a direct or indirect consequence of a fence inhibiting the passage of flood waters and flood debris.

3.7 Fences that are not maintained in a tidy and stock proof condition shall be removed by the Council.

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

### **Structures**

3.1 All fencing shall be erected and maintained by the owner in a workmanlike manner using durable materials. The owner shall carry out any maintenance or improvement works requested by the Council. If not carried out in a timely manner the Council may carry out the work at the owner's expense.

3.2 The following general principles will apply to fences across waterways:

- 1 Fences shall preferably be situated downstream of bridges.
- 2 Fences shall preferably be constructed separate from bridges.
  - 3 Fences shall permit the passage of flood waters and flood debris by:
    - a Pivoting upwards on an overhead supporting wire
    - b Breaking at a deliberate weak point and pivoting out of the way
    - c Being of such light construction (for example; electrified tapes) such that the fence will fail under the load of flood water.