

DEPARTMENT OF ENVIRONMENT AND CONSERVATION



TITLE: BOUNDARY FENCING POLICY

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Boundary Fencing Policy

Introduction

This policy covers fencing and related issues where lands reserved under the *National Parks and Wildlife Act 1974* (“parks”) share a terrestrial boundary with private property, leasehold or Crown land.

For the purpose of this policy, a boundary fence is defined as a dividing fence where:

- ♦ the fence line follows the actual surveyed boundary between parks and adjoining lands; or
- ♦ while not situated on the actual surveyed boundary (for reasons of topography or practicality), follows a mutually agreed “give and take” fence line.

Boundary fencing can be an important asset and an aid to good land management from legal, environmental, cultural, social and financial perspectives.

The responsibilities and obligations of neighbours for boundary fencing are defined by legislation (see section on Relevant Legislation).

The Department of Environment and Conservation (the Department) is not responsible for boundary fences under the *Dividing Fences Act 1991*, as the Act does not bind the Crown. However, neighbour relations are an important aspect of park operations, and there will often be a mutual benefit to the Department and its neighbours in erecting and maintaining suitable fencing. Accordingly, the Department will consider contributing to boundary fencing where necessary and appropriate, and where funds permit.

The Department also recognises that agreeing to build a boundary fence may not only be an effective way to address risks for park management and management of neighbouring land (such as protection of species or livestock), but also imposes obligations to manage risks around the boundary fence itself. Typically these include proper construction, maintenance and protection regimes for boundary fences.

Objectives

To enhance conservation and park management outcomes.

To clarify the obligations and responsibilities of the Department and adjoining landholders in relation to the construction, maintenance, repair and replacement of boundary fencing.

To ensure that boundary fences are constructed and maintained to agreed standards, and to the mutual satisfaction of the Department and its neighbours.

To ensure that risks associated with boundary fences are properly managed by the Department and its neighbours.

Scope

This policy applies to all fencing separating parks and adjoining land (whether privately or publicly owned), whether on the surveyed boundary of the adjoining lands or on a mutually agreed line other than the surveyed boundary.

Policy

1. The Department may contribute to the construction, maintenance, repair or replacement of boundary fencing, in partnership with neighbours, under certain circumstances as outlined in this Policy.
2. However, in the case of any inconsistencies between an existing fencing agreement and this Policy, the conditions of the existing agreement will prevail.

Construction of New Fencing

Circumstances in which the Department may contribute to fencing

3. The Department may contribute to the cost of boundary fencing if the fencing will:
 - a) assist in the protection and conservation of natural or cultural values in a park;
 - b) mitigate cross-boundary irregularities associated with differing land uses and the management objectives between the Department and adjoining landholders;
 - c) prevent the movement of domestic stock onto a park;
 - d) control the movement of pest animals onto, or off, a park;
 - e) assist in the rehabilitation or regeneration of a site within a park;
 - f) protect a cultural heritage site or item within a park from damage;
 - g) enhance the value of a conservation agreement;
 - h) provide a clear physical indication of park boundaries so as to avoid misunderstandings over land tenure and prevent unwitting intrusion or encroachment between parks and adjoining land;

- i) control the movement of people and vehicles in the interest of public safety;
- j) control the movement of people and vehicles to reduce undesirable or illegal activities, or fire control problems in a park;
- k) enhance a capacity to undertake any other present and future conservation or park management activity;
- l) fulfil any legal obligations;
- m) replace boundary fencing where a neighbour's fence has been damaged or destroyed due to actions of the Department; or
- n) replace boundary fencing where a neighbour's fence has been damaged or destroyed by flood, fire or other cause beyond the control of the Department or the neighbour.

Factors which will influence approval of fencing assistance

- 4. Compliance with one or more of the above criteria will guide, but not compel, a decision by the Department to construct, or contribute to the construction of, a boundary fence.
- 5. All new fences require a Review of Environmental Factors (REF) to be prepared and approved before construction. Any decision to contribute towards new fencing is subject to the outcomes of the REF. As such, preparation of a REF should occur before any recommendation to grant fencing assistance is submitted to the Regional Manager (see Procedural Guidelines paragraphs 65 to 67). Staff should refer to the *Proponents' Guidelines for the Preparation of Reviews of Environmental Factors*.
- 6. Assistance to neighbours for the construction of fencing will also be dependent upon:
 - ◆ construction within an agreed timeframe; and
 - ◆ the successful negotiation of an adequate maintenance program, and a guarantee that the maintenance program will be implemented.
- 7. All assistance will be dependent upon funding availability and priorities within the region.

Determining Boundary Lines

- 8. Wherever possible, fences should be built along boundary survey lines. In cases where the survey line cannot be located, it is desirable to have the boundary re-surveyed, where feasible. The Department will meet the cost of surveying.

9. If surveying the boundary is considered to be impracticable (for example, due to cost), the boundary may be identified by GPS. In these cases, the neighbour must agree to the use of GPS to identify the boundary, and the neighbour's attention must be drawn to clause 1 of the Fencing Agreement (see Form 5), which prevents them from raising future claims in respect of the fence's location and indemnifies the Minister administering the NPW Act (the Minister), Director General of the Department of Environment and Conservation (the Director General) or Department for any cost incurred in altering the fence line.
10. In cases where there is a dispute or ongoing concern over the actual boundary, the boundary should be re-surveyed.
11. In some cases where the surveyed boundary line is known, it may nevertheless be impractical or very costly to build the fence along the exact line of the boundary. Obvious examples of this include:
 - ♦ where the topography near the boundary is much more favourable for fencing than that exactly on the boundary;
 - ♦ where the boundary has many changes of direction, with only short lengths between the changes, making fence construction difficult.
12. In such situations, relocation of the fence line to a more favourable mutually agreed line is desirable. This may involve moving the fence onto the park, onto the neighbour's property, or preferably onto both the park and neighbour's property in roughly equal proportions. In all instances involving a "give and take" fence line, written acceptance of the agreed fence line is essential (see Procedural Guidelines paragraphs 63 and 64).

Determining the Type of Fence

13. The Department will negotiate with the relevant neighbour(s) to determine a mutually acceptable fence type (see Matters for Consideration paragraphs 86 to 88, and Appendix 2: Guidelines for Standard Fencing Types, for further information).
14. If a disagreement arises, it is important that it be resolved in as equitable and friendly a way as possible.

Fence construction proposal of mutual benefit or interest

15. Where the fence has mutual benefit for the Department and its neighbour(s), the Department may supply, or bear the cost of supplying, up to 100% of the materials for the fence. In return it is generally expected that the neighbour will supply, or bear the cost of supplying, the labour associated with clearing along the fence line and constructing the fence.

This agreement usually results in an approximate 50/50 division of costs, and reflects preferred practice by the majority of landholders who have participated in fencing agreements in the past.

16. Any additional fence-related work or materials required over and above this materials/labour 50/50 general agreement will be negotiated separately.

Fence construction proposal of mutual benefit or interest but no agreement on standard/quality of fence

17. If either party requires a higher standard of fence than the other party, the party requiring the higher standard will meet any 'top up' costs, in terms of both materials and labour, incurred in meeting those higher standards.

Fence construction proposal of unilateral benefit or interest

18. Where it is in the sole interest of one party (the Department or neighbour) to erect a fence, or where either party prefers to construct a fence unilaterally, the whole cost of fencing materials and construction will be met by that party.
19. In circumstances where one party wishes to construct a fence but the other does not, it is possible to proceed with the construction, subject to any relevant legislation (e.g. *Threatened Species Conservation Act 1995* and *Environmental Planning and Assessment Act 1979*).
20. In these cases, if the fence is to be built on the surveyed boundary or an agreed "give and take" boundary of the park, approval of the Director General for the activity is required and a REF must therefore be prepared (refer to *Proponents' Guidelines for the Preparation of Reviews of Environmental Factors*).
21. If it is the neighbour who chooses to unilaterally build the fence on the surveyed boundary or an agreed "give and take" boundary, the Department may choose to charge a fee for the preparation and determination of the REF using the fee schedule set out in the *Proponents' Guidelines for the Preparation of Reviews of Environmental Factors*. Note that the charging of a fee in these cases is discretionary.
22. In all circumstances, it is preferable for the parties to be fully informed and in agreement with respect to fencing proposals, regardless of whether or not costs are to be shared, or where the fence is to be situated.

Fence Construction related to acquisition of land

23. Fencing arrangements can be the subject of negotiations associated with the acquisition of land for addition to the reserve system, and specific fencing conditions may be written into contracts for sale. As far as possible the provisions of this policy should be adhered to in those circumstances but the policy may be varied where land acquisition negotiations require specific fencing conditions to be met.

Clearing for new fence construction

24. Clearing along the fence line before construction is important as it provides an even ground surface under the fence; reduces future maintenance requirements of the fence; and provides a firebreak for the fence.

Clearing Requirements

25. All clearing of fence lines must conform to any relevant REF and any conditions of approval. Subject to the outcomes of any REF, clearing may involve the removal of combustible matter to a maximum distance of 6 metres on each side of the fence or some other distance approved by the Department (see Procedural Guidelines paragraphs 77 to 83 for clearing procedures).
26. When assessing the degree of clearing to be undertaken, staff should be aware of potential liability under section 76 of the *Rural Fires Act 1997* (RFA). Section 76 establishes legal liability in the event that a fence is damaged by a fire, and that fire is caused by a failure to clear all combustible material for a distance of 6 metres from the fence (see “Relevant Legislation” at the end of this document for further details). Hazard reduction activities certified under this Act may not need a REF.
27. However, it is important to stress that section 76 of the RFA does not mean that the Department is required to clear all combustible material for a distance of 6 metres from a boundary fence. Rather, it provides that if either party chooses not to maintain a 6 metre clearance on their side of the fence, the party which does not maintain the clearance may be liable for the cost of replacing the fence if the lack of such a clearance causes a fire, which in turn damages or destroys a fence.
28. While this potential liability should be among the factors considered when determining the amount of clearing to be undertaken, clearing activity should ultimately be determined by consideration of the purpose of the clearing and a risk management assessment, and be consistent with the outcomes of the REF.

Responsibility for initial clearing

29. In most cases, the neighbour will be responsible for the initial clearing. However, the Department may provide assistance to the neighbour for clearing a boundary line in the following circumstances:
- ♦ where vulnerable/rare or endangered plant species (previously determined by assessment) are present within the fence corridor
 - ♦ where the area is subject to high erosion potential
 - ♦ where, following assessment by the Regional Manager, there is a recognised need to provide additional or special assistance to the neighbour.
30. In all cases where the neighbour is responsible for the initial clearing, they should be provided with written instructions by the Department and clearing activity should be monitored, to ensure compliance with the REF.
31. Further, in cases where the neighbour is responsible for the initial clearing, it is essential that the Department is indemnified against any claims for damage or injury. Accordingly, the following additional clause must be inserted into the Fencing Agreement (Form 5):
- The Adjoining Landholder will make no claims for damage against the Minister, Director General or the Department of Environment and Conservation in relation to any personal injury or damage to property sustained by him, and will indemnify the Minister, Director General or the Department of Environment and Conservation against any claim for personal injury or property damage made by any third party, arising from the Adjoining Landholder's clearing, fence construction, repair or maintenance activity.*
32. Following clearing, all cleared material should be removed from the vicinity of the fence line in order to prevent it from becoming a fire hazard. This is the responsibility of the person or officer undertaking the clearing (in most cases, it will be the neighbour).
33. Maintaining the cleared area is a shared responsibility, with each party responsible for maintaining clearings on their side of the fence. Arrangements may be made for the neighbour to assume the Department's responsibility for this maintenance. Arrangements with neighbours must be recorded in the written agreement.

Repair, replacement or upgrades of existing fences

34. The repair or replacement of a fence should generally follow the same principles and processes for new fence construction.

Repair or replacement after fire, flood, or other causes beyond control of the Department

35. Where boundary fences have been damaged or destroyed by fire, flood, or any other cause beyond control of the Department, the Department may contribute to the repair or replacement of the fence, subject to policy guidelines and receipt of a claim from the affected landholder. See Procedural Guidelines paragraphs 73 to 75 for further information.

Upgrades to fence type

36. There may be situations where a change in land use on either side of an existing fence necessitates upgrading the fence type. For example, boundary fences built for sheep have been unable to contain goats, with the result that there are now feral goat populations in a number of parks.
37. In circumstances where a neighbour changes the nature of their enterprise, and that change necessitates a higher standard of fence than previously existed (as in the example cited above), the neighbour will be required to meet all costs associated with upgrading the fence.

Assessment of impacts for fence repair, replacement or upgrades

38. An REF is required for the rebuilding of, the making of alterations to, or the enlargement or extension of an existing fence. Any work on a fence which is less than this does not require a REF.
39. Additionally, an REF is generally not required if a fencing agreement exists and:
- ◆ the proposed work is in accordance with an existing approval/agreement and the original REF; or
 - ◆ on reviewing the original REF, it is obvious that it is still relevant and that any new REF would produce the same outcomes. However, a new REF determination should be obtained based upon the original REF.
40. Where a neighbour chooses to upgrade a fence due to a change in their enterprise (see paragraphs 35 to 36), the same approach should be used to decide whether an REF is required. However, the Department may choose to charge the neighbour for the costs associated with preparing an REF and determination, using the fee schedule set out in the *Proponents' Guidelines for the Preparation of Reviews of Environmental Factors*. It should be noted that the charging of a fee in these circumstances is discretionary.

Other Considerations

41. In undertaking the repair or replacement of a fence, consideration should be given to any aesthetic, heritage or other characteristics (as described in the REF or otherwise) which may make it preferable to retain an original appearance or function, rather than to “upgrade” the fence to a more conventional type.
42. Any replacement of existing fences should be recorded in the asset register.
43. Fences constructed unilaterally by a neighbour, and situated wholly within a neighbouring property (rather than on the actual or mutually agreed boundary line), are regarded as internal property and the Department will not contribute to their repair.

Maintenance of existing fences

44. The Department recognises the importance of regular and ongoing maintenance to ensure the continued effectiveness of fencing.
45. Fences should be maintained to a level that enables them to fulfil the purpose for which they were built. Minimum requirements for fence maintenance are:
 - ♦ regular inspections to ensure that the fence remains animal proof. Frequency of inspections will depend upon the type of fence and purpose for which it was built; and
 - ♦ regular suppression of combustible material and tree and shrub regrowth along the fence line clearing, taking into consideration the purpose of the clearing, the width required to meet that purpose and as determined by risk management assessment.
46. If a REF exists for the fence, all maintenance work must conform with the REF and any condition of approval.

Responsibilities for maintaining fences and fence lines

47. Maintenance arrangements should, where possible, form part of the initial agreement between the Department and a neighbour at the time of construction. However, maintenance agreements can also be initiated at the time of maintenance need, or at the time of fence replacement.
48. Generally, the neighbour will be responsible for the routine maintenance of a fence constructed under a fencing agreement.
49. The Department may contribute to the maintenance of a fence if:

- ♦ the Department had required that the fence be built to a higher standard than the neighbour considered necessary; and
 - ♦ that fence requires a higher level of maintenance than would otherwise be required.
50. The Department will maintain a fence if the fence was constructed by the Department for its own purposes, and not in response to a claim for fencing assistance from a neighbour.

Crown land administered by a public authority and lands formerly owned by a corporatised Government body (e.g. Sydney Water)

51. Under the *Dividing Fences Act 1991*, no Crown authority is legally obliged to contribute to boundary fencing.
52. Where a park adjoins Crown land or other tenures administered by other public authorities (including State Forests of NSW), it is preferable for both parties to equally share the costs and resources associated with the construction, maintenance, repair and replacement of a boundary fence. However, the Department may contribute a greater amount, if the benefit to the Department warrants this (refer to paragraph 16). The terms of any agreement or cost sharing arrangements will be negotiated on a case by case basis.
53. Both the Department and the other public authority should prepare an REF prior to construction, in accordance with the *Environmental Planning and Assessment Act 1979*. Alternatively, a joint REF may be prepared. For further information, refer to *Proponents' Guidelines for the Preparation of Reviews of Environmental Factors*.
54. Where adjoining Crown land is leased to a third party, the public authority will, as part of any fencing agreement or cost sharing arrangements between the Department and the public authority, be required to ensure that the lessee undertakes all duties, powers and functions described in this policy, as if the lessee was a private property neighbour.
55. In instances where the adjoining Crown land was a Crown lease prior to being transferred to the public authority (for example, land dedicated as State forest or other reserve), the pre-existing lease conditions are binding upon the relevant public authority (such as State Forests of NSW). If a neighbour seeks fencing assistance in these instances, regard should be had to the provisions of the lease when determining whether the Department will contribute. For example, if the lease requires the lessee to cover all boundary fencing costs, the Department would not normally contribute. However, if there was a pre-existing arrangement for a public authority to contribute to boundary fencing, the Department may continue this arrangement (subject to funding availability and regional priorities).

56. Similar arrangements will apply if the Department assumes responsibility for lands formerly owned by a corporatised body, such as Sydney Water.

Procedural Guidelines

57. Part One of these Guidelines describes the process to be followed when negotiating and implementing a boundary fence agreement with a neighbour. Part Two identifies general matters to be considered when undertaking that process.
58. The following standard forms have been prepared and are attached at the end of these Guidelines as Appendix 3:

FORM 1: *Neighbour's Application for Boundary Fencing Assistance*

This form is to be completed by neighbours requesting assistance.

FORM 2: *Inspection Report for Replacement and New Fencing* This form is to be completed by the officer inspecting the property where new or replacement fencing is required.

FORM 3: *Inspection Report for Repairs to Existing Fencing* This form is to be completed by the officer inspecting the property where only repairs to an existing fence are required.

FORM 4: *Standard Letter to Landholder* This letter is to be used when advising the neighbour that the Area Office has supported the fencing assistance application. This letter makes clear that a positive recommendation does not automatically mean that the funds to provide fencing assistance will necessarily be available at that point in time.

Further, if the neighbour has applied for assistance to repair or replace a boundary fence destroyed by fire, flood, or any other cause beyond the control of the Department or the neighbour (as set out at paragraphs 73 to 75), Form 4 must be amended to include a liability disclaimer, as follows:

- ◆ Letters must have the words "Without Prejudice" clearly positioned at the top of the page.
- ◆ That paragraph of the letter containing the agreement to contribute to repair or replacement costs must commence with the words "Without any admission of liability, the Parks Service Division of the Department of Environment and Conservation is prepared to support your request for fencing assistance to an amount of [*insert agreed amount*]....".

FORM 5: *Agreement for Fencing Assistance* This is an agreement between the Director General and the neighbour about the conditions under which the fencing assistance will be provided. Once funds have been made available for a particular fence, the Area Office will formalise this Agreement with the neighbour by completing this form and having it signed by all parties **before** the assistance is granted.

Part One: Process for Negotiating and Implementing a Fencing Agreement

Procedures for claiming assistance for boundary fencing: Information to be supplied by the neighbour

59. Where neighbours wish to claim assistance either for a new boundary fence, a replacement boundary fence, or repairs to an existing boundary fence, they should complete Form 1: *Neighbour's Application for Boundary Fencing Assistance*.

Inspection of fence site by the Department

60. All requests for fencing assistance, whether for new fencing, replacement fencing, or repairs to an existing fence, will result in an inspection of the fence site by a designated officer, accompanied by the neighbour.
61. After receipt of the neighbour's request at the Regional office, the relevant officer should contact the neighbour and arrange a mutually convenient time for a field inspection of the fence site. The main purposes of the field inspection are:
- ♦ to determine if new fencing or fencing repairs are necessary, according to the circumstances of the neighbour's application;
 - ♦ to determine if fencing assistance should be recommended; and
 - ♦ to discuss and resolve with the neighbour any issues which might arise concerning the proposed fence or repairs, and, in particular, the location, type and construction of the fence (see Matters for Consideration paragraphs 86 to 88, and Appendix 2: Guidelines for Standard Fencing Types, for further information regarding fence types).
62. The officer undertaking the inspection must complete either:
- ♦ Form 2: *Inspection Report for New or Replacement Fencing*; or
 - ♦ Form 3: *Inspection Report for Repairs to an Existing Fence*,
- whichever is appropriate to the neighbour's application. Completion of the inspection should also be certified on the neighbour's original application form.

Agreement to a "Give and Take" Fence Line

63. If a fence will require a "give and take" fence line, written acceptance of the line is essential by both parties and should be referred to in the fencing agreement. The inspecting officer should provide details of the proposed fence line at Section I of Form 2 (*Inspection Report for Replacement and*

New Fencing). Form 5 (*Agreement for Fencing Assistance*) provides for written acceptance of the give and take fence line through provisions at paragraph 1, and Item 2 of the Schedule.

64. If the agreed line includes or excludes a significant area of land, then a conventional licence arrangement must be negotiated and formalised. This refers to reserved land excluded by a boundary fence and non-reserved land included with a boundary fence.

Preparation of the Review of Environmental Factors

65. After the inspection is completed, an REF must be prepared. In most cases, the REF for a boundary fence will be prepared by the Department. It should be noted that this arrangement differs from usual REF requirements (as set out in *Proponents' Guidelines for the Preparation of Reviews of Environmental Factors*), where the proponent of an activity would be responsible for preparing, or engaging a consultant to prepare, a REF.
66. When preparing the REF, the following factors should be addressed: the type of fence, the agreed location of the fence, access track construction, maintenance and repair, and hazard reduction.

Making Recommendations for Assistance

67. Following completion and determination of the REF, the relevant officer should make recommendations as to whether:
- ◆ construction of a new replacement fence is necessary (Form 2); or
 - ◆ repairs to an existing fence are necessary (Form 3)
- and whether fencing assistance should be provided.
68. A recommendation not to grant assistance should be clearly supported, and appended to the relevant inspection report form.
69. Any recommendation to grant assistance should be assigned a priority within the region (see Appendix 1: Criteria for Assessing Regional Priorities).
70. As soon as practicable, the neighbour should be advised in writing of the Region's recommendation regarding their application for fencing assistance, using Form 4: Standard Letter to Landholder. It should be made clear that a positive recommendation does not mean that funds will be available at that time.
71. If assistance is being provided for the repair or replacement of a boundary fence destroyed by fire, flood, or any other cause beyond the control of the

Department (as set out at paragraphs 73 to 75), Form 4 must be amended as indicated at paragraph 75.

Allocation of funds to Regions

72. Funding for boundary fencing will be treated in the overall budgetary context. New or replacement fencing costing \$5,000 or more will come from the Capital Works Budget. Repairs and maintenance of fences will come from the Recurrent Budget.

Funding procedures for repair or replacement of boundary fences after fire, flood, or other causes beyond control of the Department

73. The Department may contribute to the repair or replacement of boundary fences damaged by fire, flood, or other cause beyond the control of the Department or the neighbour, subject to policy guidelines and receipt of a claim by the affected neighbour. Where such a claim is received and is supported by the Region, it is to be referred to the Treasury Managed Fund (TMF) for insurance recovery assessment. (Staff should note that where the cost to PSD is \$10,000 or more, the TMF requires the involvement of a loss adjuster).
74. Staff should follow procedures set out in the *Accounting Manual: Part 18 - Insurance* (September 2003), when dealing with these claims.
75. Where the Department agrees to contribute to the repair or reconstruction of a boundary fence under these circumstances, and no prior fencing agreement exists, a standard Fencing Agreement must be prepared and entered into. In addition, Form 4 (standard letter to landholder) must be amended to include a liability disclaimer, as follows:
- ◆ Letters must have the words “Without Prejudice” clearly positioned at the top of the page.
 - ◆ That paragraph of the letter containing the agreement to contribute to repair or replacement costs must commence with the words “Without any admission of liability, the Department of Environment and Conservation is prepared to support your request for fencing assistance to an amount of [*insert agreed amount*]....”.

Payment of funds by Regions to neighbours

76. Once funds have been made available for a particular fence, the Regional Office should formalise the agreement with the neighbour by completing Form 5: *Agreement for Fencing Assistance* and having it signed by all parties before assistance is provided.

Procedures for Clearing for New Fences

77. Before any clearing commences on the park side of a fence line, it will require:
- ◆ written permission from the Regional Manager; and
 - ◆ an REF, which should be prepared before making a recommendation to grant fencing assistance (see paragraphs 65 to 67). If there are threatened species in the area, a Section 120 licence may also be necessary.
78. Regional Managers may also authorise, in writing, the removal of trees or branches in the park outside the set boundary clearing, where they are likely to fall and damage the fence. Staff may wish to refer to the *Guidelines for Tree Assessment and Maintenance* to determine a tree's hazard rating.
79. Clearing and disposal of debris is to be carried out in a manner which is consistent with the REF and conditions of approval. This includes types of machinery used and any other special conditions: for example, requirements to disinfect or wash down machinery before and during clearing, to guard against the introduction and spread of weeds or fungus. Generally debris is to be cleared and disposed of on private land.
80. Timber resulting from clearing on the park remains the property of the Department and Regional Managers may, when appropriate, require that such timber be retained for use in the park. Where the timber is surplus to the Department's needs, it may be disposed of with the written consent of the Regional Manager: for example, for use during fence construction (see Appendix 2: Guidelines for Standard Fencing Types – General Comments).
81. The Minister, Director General and the Department are indemnified against claims of damage caused by the clearing and removal of debris (see clause 3 of Form 5).
82. Where clearing is proposed as part of access track construction or the extension of the firebreak, trees over 5 metres high are to be retained except where they would interfere with the passage of machinery used to establish and maintain the clearing or where they are likely to fall and damage a fence or structure on private land. Staff may wish to refer to the *Guidelines for Tree Assessment and Maintenance* to determine a tree's hazard rating.

83. Clearings are to be maintained by the techniques most appropriate to prevent soil erosion and weed invasion. In general, ploughing is not acceptable.

Asset Register

84. All new fences must be entered into the asset register. Staff should forward a completed asset registration form to their respective Service Centre. After Registering the fence as an asset, the Service Centre will forward the form to Asset Services unit for inclusion in the asset maintenance system.

Part Two: Matters for Consideration

Alternatives to Fencing

85. Where a neighbour applies for assistance for new or replacement fencing, consideration should be given as to whether fencing is the only way to achieve the outcomes identified at paragraph 3, or whether those outcomes could be achieved through some other means.

Determining the Type of Fence

86. The key consideration when negotiating and determining the type of fence to be constructed should be “fitness for purpose”, as no one type of fence will be appropriate for all circumstances. “Fitness for purpose” includes consideration of whether the fencing proposal will adequately address both the risks to be contained by the fence, and those that will be created by the proposal.
87. Examples of conventional and electric fencing can be found at Appendix 2. These examples are provided for general guidance only.
88. Boundary fences should be designed and maintained to withstand known in-situ risks, such as those caused by flood or fire. For example, particular attention should be paid to areas where the fence crosses floodways and appropriately designed flood fences should be installed.

Access track construction

89. Wherever practicable and financially feasible, clearing and fence construction should be combined with access track construction. This can provide firebreak or control lines of benefit to both the Department and the neighbour.

90. All access track construction on parks should be carried out in accordance with best practice and should conform to the *Walking Track Construction Guidelines* and the *Proponents' Guidelines for Reviews of Environmental Factors*.
91. Construction of access trails on both sides of the fence is preferable when practicable. These trails should be as close as practicable to the fence. This facilitates inspection of the fence and provides an additional firebreak to protect the fence from fires. However, care should be taken to see that the trails will not cause erosion or siltation on the fence line.

Relevant Legislation

National Parks and Wildlife Act 1974

Threatened Species Conservation Act 1995

Environmental Planning and Assessment Act 1979 – Part 5

Dividing Fences Act 1991

This Act essentially provides for the apportionment of the cost of dividing fences. Section 25 of the Act states that it does not apply to the Crown.

Rural Fires Act 1997

Section 76 establishes liability for boundary fence repair or replacement in the event of fire. Amendments arising from the *Fires and Environmental Assessment Act 2002* resulted in the repeal of clause 76(6), which had excluded public authorities (including the Department) from the operation of s.76. The Department is now subject to those provisions. Specifically, section 76 provides that:

An adjoining owner who has cleared land on the adjoining owner's side of a dividing fence of all combustible matter for a distance of 6 metres from the fence may, by notice in writing, require the adjoining owner on the other side of the fence to repair or restore the dividing fence if it is damaged or destroyed by a bush fire caused by the failure of the other adjoining owner to clear the adjoining owner's side of the fence of all combustible matter for the same distance.

'Combustible matter' is defined in the *Rural Fires Act 1997* as:

- (1) *any matter or substance capable of ignition by the application of heat, fire, flame or sparks or spontaneously; and*
- (2) *any matter or substance prescribed by the regulations as combustible matter.*

The land owner upon whom a notice is served may be liable for up to 100% of the cost of replacing or repairing the damaged fence.

It is important to note that section 76 *DOES NOT ESTABLISH A REQUIREMENT TO MAINTAIN A 6 METRE CLEARANCE*. It merely establishes a liability in the event that a fence is damaged and a 6 metre clearance has not been maintained.

Rural Lands Protection Act 1998

Section 114 of Rural Lands Protection Act states:

A board may, by notice in writing given to the owner of any land adjoining a controlled travelling stock reserve, or separated from such a reserve only by a road or watercourse, require the owner to carry out fencing work on the common boundary of the land and the reserve or of the land and the road or watercourse...

Such notices may only be given where a board considers it is necessary for the proper protection or improvement of the reserve.

Relevant Policies/Documents

Department of Environment and Conservation

- ♦ *Proponents' Guidelines for the Preparation of Reviews of Environmental Factors*
- ♦ *Walking Track Construction Guidelines*
- ♦ *Fire Management Manual*
- ♦ *Guidelines for Tree Assessment and Maintenance*
- ♦ *Risk Management Strategic Plan*

Contacts

Policy

Manager, Park Management Policy Unit
Parks and Wildlife Division
Telephone 02 9585 6542

Reviews of Environmental Factors

Contact the Conservation Planning Unit for the relevant Directorate

Other

Rural Lands Protection Board

LMB 21
Orange NSW 2800.

Contact numbers for relevant Boards can be obtained through the Executive Officer; Telephone (063) 913 673

Department of Infrastructure, Planning and Natural Resources

23-33 Bridge St

Sydney 2000
Telephone: (02) 9228 6111

NSW Farmers Association
GPO Box 1068
Sydney 1041
Telephone: (02) 9251 1700

National Farmers Federation
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Kingston ACT 2604
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