

LANGEBERG MUNICIPALITY

DRAFT POLICY FOR FENCING ACROSS MUNICIPAL ROADS AND PEDESTRIAN PATHWAYS WITH THE PURPOSE OF RESTRICTING ACCESS FOR SAFETY REASONS

1. Purpose

To guide applications for fences across municipal roads and accessways, to prevent pedestrian thoroughfare for safety reasons, and to clarify the relevant considerations when taking decisions in this regard.

2. Legislation:

- Sections 16 and 36 of the Bylaw on Roads and Streets, 2023 read as follows:

16. Fences on street boundaries

Subject to the provisions of the municipality's by-law relating to Boundary Walls and Fences, no person may erect a barbed-wire-, razor wire-, electrified fence or other dangerous fence on the boundary of a street or public place except with the written permission of the municipality.

36. Permanent closure of streets or roads

(1) The municipality may permanently close or divert any street or part thereof or restrict access to any street. .

(2) When the municipality decides to act in terms of subsection (1), it must give notice of such intention in a local newspaper in at least two official languages.

(3) Any objection against the intended action must be delivered in writing to the municipal manager within 14 days from the date of notification in terms of subsection (2).

- Section 33 of the Constitution requires that organs of state make decisions which are **lawful, reasonable, and procedurally fair**.
- Section 6(2) of the Promotion of Administrative Justice Act (3 of 2000) ("PAJA") sets out the reasons why an administrative decision may be reviewed, including: if irrelevant considerations were taken into account or if the decision maker did not consider relevant considerations.

3. Application Process and Content:

- 3.1. Any individual, collective, corporation or institution which proposes to erect a fence on any municipal owned property, must apply in writing to Council.
- 3.2. The application must be lodged with the Director: Corporate Services and must be made on the requisite application form and be accompanied by the written consent of all adjoining property owners and / or any other interested and affected parties. Where objections are received, these must be submitted together with a response to the objection received.
- 3.3. The application must include full motivation explaining why the proposed fencing is applied for. In particular, it must be stated in what way the proposed fencing will contribute positively to the specific area and the public interest in general.

3.4. The application must include the following details:

3.4.1. Proposed extent (height, length, and area) of the fence.

3.4.2. Proposed materials to be used.

3.4.3. Visual illustration and/or description of the intended fence.

3.4.4. Quotation of the cost of the proposed fence.

3.5. The delegated authorised official must, on receipt of the application, consult with all affected Departments of the Municipality, and other Interested and Affected parties, and comply with the required Public Participation Processes before preparing an Item to Council for a decision. Comment from SAPS, the Municipal Engineering and Traffic Departments, and affected residents must be obtained.

4. Evaluation Based on Merit:

In considering applications, Council must address the following relevant considerations relating to the desirability of the proposal in the public interest. Applications should only be considered for approval where the benefits outweigh the disadvantages:

Relevant consideration	Key Questions that a decision maker should be asking
(a) Socio-economic impact.	➤ Who will benefit from the fencing and in what way? ➤ Who will be adversely impacted by the fencing and in what way?
(b) Scale of the capital investment.	➤ What will the cost be (initial and maintenance)? Who will pay? ➤ Consistent with IDP and Budget? ➤ Will the capital investment have a positive or negative impact on the area?
(c) impact on engineering services.	➤ Will the fencing impact on engineering services or the access to such services?
(d) Impact on community safety, and wellbeing.	➤ Public input: What issues are raised by members of the public for and against the proposal – what is the relevance /weighting of the issues raised?
(e) Impact on heritage.	➤ Will the proposed fencing / gate have a negative impact on any heritage aspects?
(f) Visual impact, character of the area.	➤ What is the visual impact to neighbours and to the public?
(g) Impact on the biophysical environment.	➤ Will the proposed fencing / gate impact negatively on the biophysical environment? e.g. natural drainage lines.
(h) Traffic impacts.	➤ Will the proposed fencing / gating impact negatively on pedestrian and vehicular traffic or other transport related considerations, including public transport?
(i) Consideration of alternatives.	➤ What other means have been considered to address the problem which has given rise to the request for a fence/gate.
(j) Precedents.	➤ Previous decisions on fencing of public streets for security reasons.
(k) Cumulative impacts.	➤ Will the proposed fencing / gate result in an unacceptable cumulative impact?
(l) Alternative Options	➤ Are there viable alternative options which will have less impact e.g. providing vehicular access; increased law enforcement presence etc.

5. Council Decisions:

- 5.1. Council may grant or refuse an application, with or without conditions, and must advise the applicant in writing within 21 days of the decision.
- 5.2. Costs for the installation of fencing shall be the responsibility of the applicant.
- 5.3. Council's decision on applications is final.

6. Reasons for Refusal:

Reasons for refusal are based on the assessment of the relevant considerations outlined in Section 4. above, and may include one or more of the following reasons:

- 6.1. Adverse impact on any engineering services or the access to such services.
- 6.2. Lack of desirability of the proposed fence in terms of aesthetics and visual impact.
- 6.3. Adverse impact on the safety and welfare of any section of a community.
- 6.4. Adverse impact on any existing rights.
- 6.5. Valid objections to the proposal.
- 6.6. Cumulative impact of fencing a number of streets / accessways will adversely impact on the area.

7. Record of Decisions:

A register must be kept recording the decisions taken and the reasons for such decisions.

The register must be used to assist in monitoring the cumulative impact of decisions.