

PLANNING INFORMATION SHEET 10

Fences

How are fences controlled by the law?

The Fencing Act 1978 (the Act) sets out everybody's rights with regards to erecting fences between neighbouring properties. This sheet provides a guide to some of the contents of the Fencing Act. It is not a legal document and the Act should be referred to for more detailed information where appropriate.

Who Pays?

Generally, if you want to build a fence on a common boundary with a neighbour, or make repairs/upgrade an existing fence, you and the owner of the neighbouring property must pay half the costs each.

In the first instance, it is usually best to meet with the owner of the neighbouring property to discuss the matter. Often neighbours will disagree about what is appropriate. Your proposal should be realistic and you should be prepared to compromise with your neighbour. Some fencing disputes can end up in court when disagreements get out of control.

What happens if we can't agree?

If your neighbours won't co-operate and no compromise can be reached, you cannot just put up the fence and send them the bill. There is a formal procedure that must be followed. First you must give your neighbour the details of your proposal in writing. This is called 'serving notice'. The notice must state that it is served under the Fencing Act 1978 and must contain the names and addresses of both owners, a description of the fence, where it will go, how it is to be built, the estimated cost, how materials are to be purchased and the start date for the work.

The notice must also state that the neighbour has 21 days to object to any aspect of the proposal and make any counter proposals. It must say that if the neighbour does not accept any liability, you must be told within 21 days the reason why and give the name and address of whoever the neighbour believes is liable.

The notice must say that if the neighbour makes no communications within 21 days they will be deemed to have agreed to the proposals and will have to share the cost. You should sign and date the notice and keep a copy. **You cannot start work during the 21 day period while you wait for a reply.**

In certain circumstances the neighbour can refuse to pay. If they do not own the property, believe the existing fencing is adequate or think your proposal is excessive, they can serve you with a cross-notice.

This cross-notice must reach you within 21 days and should detail the objection and any counter proposals. It should state that it is served under the Fencing Act 1978 and that any persistent dispute in the matter will have to be sorted out by the courts or the Disputes Tribunal. The neighbour should sign and date the cross-notice.

If you buy a house you cannot be held responsible for a previous owner's fencing commitments. If either party sells before all matters are dealt with the arrangement lapses.

How high can my fence be?

Under the District Plan fences and walls can be 2m in height without needing to obtain permission from Council. For a fence higher than this you will require resource consent.

Where should my fence be located?

Normally the middle of the fence should be on the boundary line between the two properties. A fence cannot unduly encroach on either property without the owner's approval. However there are exceptions. These can occur when a court order recognises there is no alternative, the degree of encroachment is minimal and it does not adversely affect the owner's use and enjoyment of their land. If, in your opinion, the fence does unjustifiably encroach on your property you can apply to the District Court to have it removed.

None of these provisions apply to fences built before the Act came into force on 1 April 1979.

Right of access

The people building the fence have a right of access at a reasonable time to do whatever is reasonably required to build the fence. This is the case even if the neighbour is not contributing to the cost of the fence.

What happens if the fence is damaged?

You can pay for the repair of a fence while the neighbour is away if the fence needs immediate repair or replacement (e.g. after a storm). You can fix the fence and recover half the costs from the owner. Of course if the fence must be replaced it should be with a comparable fence, not a much more expensive one.

However if a fence is damaged or destroyed by liable in any way that is not covered by the Act, that person must cover the costs of the repair. This might be when your neighbour has a tree that is pushing the fence over or when a vehicle runs off the road and destroys the fence. In both cases the person responsible must pay.

What can I do if we can't reach agreement with our neighbours?

If your negotiations with you neighbour do not reach agreement you can take the matter to the Disputes Tribunal or the District Court.

If your neighbour is difficult to deal with and you can't face taking the issue to court, you can simply build a fence inside the boundary of your property but you will have to pay for it all yourself.

At times of heavy rains, stormwater flows can become a problem. This stormwater runs overland and can often become a significant flow. If your fence is across a dip in the land then it may act as a dam. This dammed water may then cause flood damage to your neighbour's property. It may even damage the fence. If this is likely to happen it may be sensible to leave a 150mm gap beneath the fence of use and open mesh or wire fence.

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