

Building a fence is a common requirement but it can get tricky if you and your neighbour can't agree. Knowing what you can and can't do, and what steps to take will help you in this process.

For additional advice, particularly around fencing disputes, visit the local Citizens Advice Bureau or check out their website: www.cab.org.nz

FURTHER INFORMATION

This brochure is published by the Whakatāne District Council and is intended to provide general information only. It is not intended as a legal document and may not be applicable to all circumstances. For further information, please contact the Whakatāne District Council.

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Building a Fence



WHAT SHOULD I DO FIRST?

It's best to meet face-to-face with the owner of the next-door property to discuss the matter. Make sure your proposal is realistic. Your neighbour can quite reasonably disagree about what is appropriate. Some fencing disputes can get out of hand and end up in a courtroom. Knowing what you can and can't do will help you in the process of building a fence.

WHAT YOU SHOULD KNOW ABOUT THE FENCING LAW

Fencing is often the subject of disputes between adjoining property owners.

The Fencing Act 1978 sets out everybody's rights and obligations, and should be referred to before taking any action. The Fencing Act 1978 is administered by the Department of Justice, not the Whakatāne District Council.

Queries should be directed to either the Citizens Advice Bureau or local law offices.

I WANT A FENCE BETWEEN MY NEIGHBOUR'S PROPERTY AND MINE. WHO PAYS?

Generally, if you want to build or upgrade a fence on a common boundary with a neighbour you can pay the full cost yourself, but either party can ask the other to pay half. The Fencing Act is a formal way of doing this and may be needed if people cannot agree on what standard the fence should be built to.



WHAT IF MY NEIGHBOUR WON'T COOPERATE? CAN I JUST PUT UP THE FENCE AND SEND THEM THE BILL?

No, 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 and how it is to be built. You will also need to include the estimated cost, how materials will 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 proposal. The notice must say that if the neighbour makes no communication within 21 days, they will be deemed to have agreed to the proposal and will have to share the cost.

You should sign and date the notice, and keep a copy for yourself. You cannot start work during the 21-day period while you wait for a reply.

CAN MY NEIGHBOUR REFUSE TO PAY?

Yes, in certain circumstances. If they do not own the property, believe the existing fence 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 neighbours should sign and date the cross-notice.

WHAT IF WE JUST CAN'T AGREE?

If your negotiations with your neighbour reach an impasse, you can take the matter to the Disputes Tribunal or the District Court. For further advice, contact your solicitor or your local Citizens Advice Bureau.

CAN I BUILD A FENCE ON MY OWN PROPERTY?

Yes. If your neighbour is difficult to deal with and you can't face taking the matter to court, you can simply build the fence within the boundary of your own property. You will, however have to pay for it all yourself. You should not trespass on to your neighbour's property when building this fence.

HOW HIGH CAN THE FENCE BE?

You can build up to 2m in height without the need to obtain a building consent or resource consent from the Council. For fences higher than this, you should talk to the Council first before proceeding.