

FENCING NOTICE

(Dividing Fences Act 1991)

*To: _____
**(Name of adjoining land owner – to be inserted by Council)*

The fencing work described below is required between our adjoining properties. I would be pleased if you would share the cost as shown below.

From: **Name:** **Contact No:**
Address:
Signature: **Date:**

Proposal:

1. Properties affected (street address):

Property A owned by
Property B owned by
(To be inserted by Council)

2. Position of fencing work (on boundary line, or as shown on attached plan):

3. Fencing work proposed to be carried out (include length, height and type of materials):

4. Estimated full cost: \$

5. Proposed sharing of cost arrangements:

If you agree to this proposal, please sign the form of agreement hereunder and return a copy to me with your contact details:

Section 12 of the Dividing Fences Act 1991 provides that if adjoining owners do not agree as to the fencing work to be carried out within 1 month after the service of this notice, either owner may apply to a Local Court or a Local Land Board for an order determining the manner in which fencing work (if any) is to be carried out.

AGREEMENT TO FENCING

Property A

I agree to the above proposal

Property B

I agree to the above proposal

(Signed)

(Date)

(Adjoining land owner signature)

(Date)

Please see over for more information about dividing fences.

(Contact details – phone, e-mail etc)

Important Information

The Dividing Fences Act

The Dividing Fences Act 1991, commenced on 1 February 1992. The Act is about how the cost of a dividing fence is shared between adjoining land owners, where an owner wants to erect a dividing fence or wants work done on an existing dividing fence. It sets out only the minimum requirements, and owners may always agree to arrangements above those requirements.

Dividing fences are a matter between adjoining landowners and **not within Council's jurisdiction**.

The Crown Lands Division is the State Government department charged with the administration of the Dividing Fences Act 1991. However, their responsibility is limited to administration matters. It does not include the provision of advice relating to fencing disputes nor does it include providing specific legal advice relating to the provisions of the Act. This advice should be sought from other sources including Legal Aid services, chamber magistrates at the local court, LawAccess NSW, Community Justice Centres or private lawyers.

A Dividing Fence

A dividing fence is a fence that separates the lands of adjoining owners. The fence may be a structure of any material, a ditch, an embankment or a vegetative barrier (e.g. hedge). It does not include a retaining wall or a wall of a building. The cost of a dividing fence includes the cost of all related fencing work, such as preparation of the land, and the design, construction, replacement, repair and maintenance of the fence.

Sharing the cost of a dividing fence

Adjoining landowners are liable to share equally the cost of fencing work that will result in a sufficient dividing fence. A sufficient dividing fence is a fence sufficient to separate the properties, for example a paling fence in a residential area, or a wire and steel star post fence in a rural area. If a court or land board needs to decide what is a sufficient dividing fence between adjoining owners, it will consider matters such as any existing dividing fence, the uses of the lands, privacy or other concerns of the owners, the usual kind of fence in the locality, or any relevant local council policy.

If one owner wants a fence of a higher standard than a sufficient dividing fence, the owner wanting the higher standard is liable to pay the difference in the cost between that fence and a sufficient dividing fence. If an existing dividing fence is damaged or destroyed by one owner or someone on the owner's land, that owner is liable to pay up to the whole cost of restoring the dividing fence.

Serving a Fencing Notice

An owner wanting an adjoining owner to contribute to the cost of a dividing fence **must** first serve a Fencing Notice on that adjoining owner (personally or by post). Owners are liable to contribute to the cost once agreement is reached.

A Community Justice Centre may be able to help if adjoining owners have difficulty reaching agreement. If agreement is not reached within one month of the Notice being served, either owner may apply to a Local Court or Local Land Board to have the matter decided.

When a fencing notice need not be served

If URGENT fencing work is needed on a dividing fence that has been destroyed or damaged, adjoining owners must share equally the cost of that urgent work even though a Fencing Notice has not been served. Reasons for urgent fencing work include safety, security or to prevent stock loss. A Local Court or Local Land Board can review any dispute arising in these circumstances. An owner can apply to a Local Court or Local Land Board for an Order about costs if a Fencing Notice is unable to be served because the whereabouts of the adjoining owner are unknown.

Authorities not covered by the Act

Some authorities do not have any rights or liabilities under the Act. They are the Crown, local Councils or other trustees in respect of public reserves, and local councils in respect of public roads. Nevertheless, an authority may wish to contribute to the cost of a dividing fence upon request.

Seeking further information including dispute resolution

The Dividing Fences Act 1991 is available from the NSW Government Information Service or at the Australasian Legal Information Institute web site.

For further information including dispute resolution please visit www.lpma.nsw.gov.au/crown_land/dividing_fences

Please Note: Council will forward a Fencing Notice(s) to the postal address of the adjoining property owner(s) but accepts no responsibility for the receipt or outcome of the notice(s).