

RETAINING WALLS, RESIDENTIAL and RURAL FENCING

This publication's intention is to provide general information only. Exemption from requiring a Building Permit does not exempt compliance with the Building Code of Australia (BCA), Australian Standards, Local Laws, Planning (Development) Approvals and Conditions, Governing Legislation and Statutory Provisions.

DEFINITIONS - Class 10b Construction

"Retaining wall" means any structure which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another.

"Fence" means any structure, including a retaining wall, used, or functioning as a barrier, irrespective of where it is located and includes any gate.

"Dividing fence" means a fence that separates the lands of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary.

"Sufficient fence" means a fence described in Clause 6 of the *Local Laws Relating to Fencing*.

"Class 10b" a structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool, or the like.

GENERAL INFORMATION

Within the Shire of Denmark, regulations governing fencing requirements encompass two key laws: *the Dividing Fences Act 1961* (the Act) and our Local Laws Relating to Fencing. These laws establish the rights and obligations of property owners regarding dividing fences, covering their design, construction, upkeep, and associated expenses.

The Act provides a clear process for sharing costs between neighbours, determining boundaries, and handling disputes over dividing fences in specific instances through the courts. It is important to note that any agreement, contract, or covenant regarding dividing fences between owners of adjoining land supersedes the provisions of the Act. In most cases, if a dispute arises between neighbours, the Magistrates Court will resolve it. Therefore, the best course of action when facing issues with a dividing fence is to approach the owner of the adjoining land, discuss the matter, and try to find a resolution together.

Disputes related to dividing fences are considered a civil matter and should be resolved directly between the involved property owners. The Shire of Denmark lacks legislative authority to intervene in such disputes, except in cases where the fence poses a hazard to owners, occupants, or the public (e.g., a broken asbestos fence or a leaning brick wall).

For a more comprehensive understanding of the rights and responsibilities of owners under the Dividing Fences Act 1961, as well as guidance on the dispute resolution process, the Department of Commerce webpage "Dividing Fence Matters - Overview" provides further information.



General Information and Checklist Requirements for Building Approval

What is a dividing fence under the Act?

A dividing fence, as defined by the Act, is a 'sufficient fence' that serves as a boundary between the lands owned by different individuals. This fence can be situated either on the common boundary of adjoining lands or along a line other than the common boundary.

A sufficient fence is characterised as follows:

1. It aligns with the requirements set forth by a local law of the relevant local government, or
2. It is a fence agreed upon by the owners of the adjoining properties, provided it complies with the applicable local law.

If no local law exists or no agreement is reached between the owners, a sufficient fence is considered to be:

1. A sturdy fence that is capable of resisting the trespass of cattle and sheep, or
2. A fence determined by a court.

However, it is crucial to note that if you construct a dividing fence of a higher standard than the specified sufficient fence without obtaining the agreement of the adjoining owner, you may only claim half the cost of erecting and maintaining the sufficient fence as described above.

For more detailed information regarding what qualifies as a sufficient fence, refer to Clause 6 of the Shire of Denmark Local Laws Relating to Fencing.

Do I need a building permit?

Fencing - Dividing fences made of timber, corrugated fibre cement, or Colorbond materials do not require a building permit if they adhere to the manufacturer's specifications, are not taller than 1.8 meters, with a maximum height of 2.1 meters if both adjoining landowners agree, and do not extend forward of the dwelling.

- Any fence forming part of a swimming pool security barrier requires a building permit, regardless of height or materials used.
- A building permit is necessary for brick, stone, or concrete fences over 0.75 meters in height.
- Rural fencing for dividing land or retaining livestock on a specific lot does not need a building permit.

Front fences in residential areas constructed of wrought iron, tubular steel, link mesh, timber, or plastic-coated or galvanized link mesh materials do not need a building permit if the following conditions are met:

- The fence is solid up to a height not exceeding 1.2 meters and then visually permeable up to 1.8 meters.
- Adequate vehicle sightlines are provided in accordance with the Residential Design Codes (R-Codes).
- The fence is not subject to specific estate, character protection, or heritage guidelines or restrictions.



General Information and Checklist Requirements for Building Approval

Retaining Walls - A building permit, inclusive of structural engineering certification, is required for any retaining wall that retains ground more than 500mm in height.

A permit and engineering certification is also required, regardless of height, for any retaining wall that:

- is associated with any other building work (e.g., the construction of a dwelling); or
- will encroach into another lot; or
- will adversely affect adjoining land, or is required to protect adjoining land; or
- will affect a party wall, substantial dividing fence or existing boundary retaining wall; or
- supports any physical load or structure.

PLANNING AND BUILDING APPROVAL

Any substantial structure built along a boundary is likely to require planning approval and a building permit issued prior to construction. This is particularly the case for retaining walls, walls that form part of buildings, unusually high fences or fences made from unusual materials. Brick and masonry fences require a building permit.

Fences that form part of a swimming or spa pool barrier also require a building permit, prior to construction. While simple, conventional dividing fences may not need a building permit, you should always check with the Shire of Denmark Development Services team first, as construction without planning and building approval is an offence.

Under the *Building Act 2011* and *Building Regulations 2012*, and all aforementioned legislation, all of the abovementioned structures and associated materials, whether a Building Permit is required or not, must comply with all relevant Australian Standards and governing legislation, inclusive of all applicable National Construction Code (NCC) requirements.

BUILDING ACT 2011 FEES, BUILDING SERVICES LEVY and BCITF PAYMENTS

BA2 - Uncertified application for a building permit (s.16(1))

The fee is **0.32% of the estimated value** of the building work, but **not less than \$110.00**.

Building Services Levy - Building Permit Application

The levy is **0.2% of the estimated value**, but **not less than \$61.65**.

Building Construction Industry Training Fund (BCITF) - For all work \$20,000 and above in total value

The BCITF Levy is calculated at **0.2% of the total value of construction** for all works with an estimated value of more than \$20,000.

Payment is required to be made prior to issuing of the building permit and any construction works commencing.

*This document is intended as a guide only to assist applicants. For any further information please contact the Shire of Denmark.
Please note, additional information may be requested upon assessment of your application.*



General Information and Checklist Requirements for Building Approval

CHECKLIST - BUILDING PERMIT APPLICATION (IF REQUIRED)

1.	Form BA1 (Certified) or Form BA2 (Uncertified) <ul style="list-style-type: none"> Completed and signed Form BA1 – (Certified) or Form BA2 (Uncertified), to be signed by each owner of the land, unless exempt. Accurate estimated value of building work (including GST) on the Building Permit Application Form (<i>Building Regulations 2012 Schedule 1, Clause 1, 2 and 3</i>). Registered Builder's Details (if over \$20k) – Builder must provide their registration number. Owner Builder's Details – Owner-Builder Approval / Certificate from the Building Services Board, if not using a registered builder and works exceed \$20,000. 	<input type="checkbox"/>
2.	Construction Training Fund Levy Form (CTF) Completed Construction Training Fund Levy Form (CTF) if works exceed \$20,000 or CTF receipt or proof of pre-payment.	<input type="checkbox"/>
3.	Building Permit Application Fee Building Permit Application Fee plus associated State levies must be paid at time of lodgement of the application (Refer to the Building Act Fees).	<input type="checkbox"/>
5.	Planning/Development Approval Planning Approval or written advice issued by the Shire of Denmark Planning Department for the proposed development (if applicable).	<input type="checkbox"/>
6.	This Completed Checklist Completed and signed checklist.	<input type="checkbox"/>
7.	BA20 and/or BA20A Form Notice and request for consent to encroach or adversely affect other land (if required).	<input type="checkbox"/>
8.	Site Plan (1:200 scale), including: <ul style="list-style-type: none"> Street names, lot number, and title reference to the site. The size and shape of the site including property boundaries, their dimensions, and existing buildings and structures to be clearly shown. A feature / contour survey of the property showing a datum point, contour lines (500mm intervals), spot levels and relative levels of the site. All elevations and heights, including natural and finished ground levels to be shown. Setback distances from the property boundaries to the proposed outbuilding and distance away from other existing buildings / structures on the property to be clearly indicated. Existing sewer connections or septic system, stormwater drains or easement locations. Location and sizes of stormwater drain / disposal system. Location and heights of stabilised embankments or retaining wall/s – if applicable. Clearly indicate the North point. 	<input type="checkbox"/>
IF REQUESTED - STRUCTURAL ENGINEER PLANS AND DETAILS		
9.	Structural Engineers Plans / Specifications and Construction Details One copy of structural engineer's construction details signed by the design engineer including: <ul style="list-style-type: none"> when retaining over 500mm, or a masonry fence is proposed, footing and all construction requirements must be provided and be site specific. Site inspection report (if required) including site classification (soil type and wind rating). 	<input type="checkbox"/>

