

NDLAMBE MUNICIPALITY



FENCING POLICY

NDLAMBE MUNICIPALITY
BOUNDARY FENCE CONSTRUCTION AND REPAIR POLICY

Applicable legislation: Fencing Act 31 Of 1963 as amended and Municipal Financial Management Act, 56 of 2003.

Purpose: The purpose of this policy is to regulate the procedures that need to be followed by owners of Agricultural properties which share a common boundary with properties owned by Ndlambe Municipality that are utilised for livestock farming, or on which livestock are depastured, where contributions towards costs for the erection and maintenance of boundary fences are claimed.

TABLE OF CONTENTS

1. Definitions
2. Erection and repair of boundary fences
3. Notice in respect of the erection of a boundary fence
4. Notice in respect of maintenance repairs to a boundary fence
5. Notice in respect of emergency repairs to a boundary fence
6. Schedules

1. Definitions:

Definitions used in this policy have been imported from the Fencing Act, and unless the context otherwise indicates-

'boundary fence' means any fence (including, in an area in respect of which a proclamation under section *three* is in force, a jackal-proof fence), together with any necessary gate or any contrivance forming part or serving the purpose of such a gate, erected on or as near as possible to the boundary of any holding and separating such holding from any other holding;

'contributions' means contributions by owners to the cost of boundary fences in accordance with this Act, and

'contribute' has a corresponding meaning;

'cost', in relation to the erection, alteration or repair of any fence, means any cost of or incidental to such erection, alteration or repair, including the cost of transport of materials;

'jackal-proof fence' means a boundary fence which is jackal-proof;

'Municipality' means the Ndlambe Municipality established in terms of section 12 of the Municipal Structures Act, 117 of 1998, and inclusive of any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this policy by virtue of power vested in the municipality and delegated or sub-delegated to such political office bearer, councillor, agent or employee;

'repair', in relation to any boundary fence, includes putting and maintaining such fence in good order by trimming, cutting or any other means.

'owner' means –

- (a) the owner of the land, building or premises; or
- (b) the person or occupier in control of the land, building or premises or any person who has or had a right to use the land at the time when the situation came about.

'Minister' means the Minister of Agriculture;

The definitions used in this policy are in accordance with the definitions used in the Fencing Act 31 of 1963.

2. **Erection and repair of boundary fences**

3.

- 3.1. Each owner shall be liable for costs of erection, or repairs of any boundary of his/her/its holding.
- 3.2. However, the owner may share the costs of erection and repair of boundary fence with the Municipality if the Municipality is the owner of the adjoining holding separated by such boundary fence.
- 3.3. The Municipality will not be liable for erection or repair unless it will derive necessary beneficial use from the type of the fence as erected or repaired.

4. Notice in respect of the erection of a boundary fence

- 4.1. An adjoining owner who requires the Municipality to contribute to the cost of the erection or total replacement of a boundary fence, shall inform the Municipality in writing, set out nearly as possible in the form set out in the First Schedule of the intention to erect the fence, which shall be dated and shall set out the specifications and the estimated cost of the fence and the proportion of such cost which the Municipality is required to contribute.
- 4.2. The Municipality shall within a period of one month after the date on which such a written notice was given, approve the construction, or submit an alternative costing and specification. Should a dispute arise as to the specification or costs, it shall be dealt with in accordance with the provisions of the Second Schedule.
- 4.3. Should the Municipality not lodge an objection within 30 days, the owner who gave the notice may proceed forthwith to erect the fence.
- 4.4. Upon completion of the fence, the owner must submit a detailed account of costs, indicating clearly the portion that the Municipality is required to pay to the Office of the Municipal Manager.
- 4.5. The owner is required to register on the National Supplier Data Base.
- 4.6. The Municipality undertakes to make payment within sixty days of receipt of the account.

5. Notice in respect of maintenance repairs to a boundary fence

- 5.1. An adjoining owner, who requires the Municipality to assist with the costs of routine maintenance repairs to a common boundary fence, must notify the Municipality in writing of the extent and estimated costs of such repairs.
- 5.2. The Municipality shall within a period of seven days, inspect the fence and if satisfied approve such repairs.

- 5.3. Any dispute arising in this regard shall be dealt with in accordance with the provisions of the Second Schedule.
- 5.4. Should the Municipality not lodge an objection within seven days upon notification or fails to comply with the notice, the owner submitting the notice may commence with the repair of the fence.
- 5.5. Upon completion of the repair, the owner must submit a detailed account of costs, indicating clearly the portion that the Municipality is required to pay to the Office of the Municipal Manager.
- 5.6. Such payment is made on the basis of a 50/50 cost sharing as it has been the norm between the Municipality and the owner.
- 5.7. Repairs or replacement done must be in- line with previous fencing specification. No new specifications will be considered for either repairs or replacement.
- 5.8. The owner claiming costs is required to be registered on the National Supplier Data Base and provide the required documents.
- 5.9. The Municipality undertakes to make payment within sixty days of receipt of the account if all the required documentation to facilitate payment is attached.
- 5.10. Where the payment will be borne by the Municipality, the Municipal Supply Chain Management processes in line with the provisions of the Municipal Financial Management Act (MFMA) will apply to ensure compliance with Audit requirements.

6. Notice in respect of emergency repairs to a boundary fence

- 6.1. Should a boundary fence be damaged due to a criminal act, or a natural disaster, and immediate repairs are required to contain livestock to prevent losses or straying, then an adjoining owner may effect such repairs that are necessary to contain the livestock, without prior notification to the Municipality, on the proviso that the notice required under Section 10, must be lodged within 72 hours of the need for the emergency repair becoming known to the adjoining owner.

Thereafter the procedures as outlined in paragraph 3 will be followed.

7. Schedules

**First Schedule
NOTICE OF INTENTION TO FENCE**

To Owner/Agent of Owner of farm or holding
Address

Take notice in terms of section *seven* of the Fencing Act, 1963, that I intend to erect a fence along the boundary between my farm/holdingNo..... and your farm/holdingNo.....

The work will be commenced on or about the day of 20.... in accordance with the specifications annexed hereto, and I request you to inform me whether it is your intention to contribute either labour or material, or both, towards this fencing. If no reply or objection to the proposed specifications reaches me within the period prescribed by the said section *seven*, the work will be proceeded with in the usual manner.

Signature
Owner/Agent for Owner

Date

SPECIFICATIONS OF FENCE

1. Height of fence:metres
2. Number of wires: Barbed Plain
3. Distance apart of wires in centimetres from ground upwards:
4. Nature of straining posts:
5. Distance apart of straining posts:metres
6. Nature of standards:
(i.e. stone pillars, iron standards - kg, wooden posts - minimum diameter in centimetres, etc.)
7. Distance apart of standards:metres
8. Nature of droppers:
9. Distance apart of droppers:metres
10. Number of gates: single double
11. Length of proposed fence:metres
12. Remarks:
13. Estimated cost including erection: R.....

Second Schedule

DISPUTES

1. An owner who is a party to the dispute may serve on the other owner a notice in writing stating that he desires the matter in dispute to be determined by a board appointed in accordance with and having the powers set out in this Schedule.
2. The board shall consist of three members (of whom none shall be related to any of the parties) appointed as in this Schedule provided, unless the two owners mutually agree that one person shall determine the matter, and further agree as to who that person shall be. Such person shall have all the powers conferred on the board by this Schedule.
3. In default of such agreement each owner shall within fourteen days after the date of the notice aforesaid nominate one person as a member of the board, and shall inform the other owner of the name and address of the person so nominated.
4. If after the expiry of the said period either owner has made default in complying with paragraph 3 the other owner may request-
 - (a) the magistrate of the district in which the two holdings are situated; or
 - (b) if the holdings are situated in different districts, the magistrate whose seat of magistracy is nearest to the place which is or will be the central point of the boundary fence,

to appoint forthwith a member of the board to act in the place of the person who should have been nominated by the defaulting owner, and the magistrate shall forthwith comply with the request.
5. Notice of appointment shall forthwith be given by the appointing owner or the appointing magistrate, as the case may be, to a member appointed as aforesaid, and the two members so appointed shall within fourteen days after the giving of such notice nominate a third person to be a member of the board.
6. If at the expiry of the last mentioned period of fourteen days the said two members have made default in agreeing upon a third member, the magistrate aforesaid shall, at the request of either owner, appoint a third member. Notice of the

appointment shall forthwith be given to the third member by one or other of the owners or by the appointing magistrate, as the case may be.

7. The board shall proceed to determine the matter in dispute as soon as possible after the third member has received his notice of appointment.
8. The third member shall be chairman of the board and shall summon all meetings of the board.
9. For the purpose of determining the matter in dispute the board shall have power to summon and hear witnesses, to administer the oath to witnesses, to call for the production of papers and documents, and to enter upon and inspect the holdings concerned or any adjacent holding.
10. The decision of the majority of the members shall be the decision of the board and shall be binding on both owners.
11. The board shall have power to award to either owner as against the other owner the costs of or incidental to the determination of the matter in dispute, including the remuneration, and allowances to defray the expenditure, of the members of the board at a rate determined by the Minister in consultation with the Minister of Finance.
12. Any decision of the board, including any decision as to costs, may be enforced in the same manner and by the same persons as a judgment or order of the magistrate's court of the district.
13. For the purposes of carrying out any of the powers of the board and of the payment of allowances to witnesses, the law relating to magistrates' courts shall, save as otherwise provided in this Schedule, *mutatis mutandis* apply.
14. Any costs awarded by the board may, at the request of the owner against whom the award was made, be taxed by the clerk of the magistrate's court of the district in accordance with the law relating to magistrates' courts.