

retaining walls

The Act and retaining walls

The *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (the Act) states that a fence is not a retaining wall. This is because retaining walls serve a different purpose than fences. They are engineered to support built-up or excavated earth. Retaining walls are not normally a matter of joint responsibility for neighbours because a retaining wall is usually of more benefit to one neighbour.

However, QCAT may make an order about a retaining wall in limited circumstances e.g. the dividing fence cannot be repaired unless the retaining wall is repaired.

Who is responsible to erect a retaining wall?

The most important factor in answering this question is determining the natural state of the land, as land in its natural state needs no support. It is only when the natural land is altered that support is required. Any party can alter the natural state of their land (subject to development controls), but with this ability comes the obligation to support the adjoining natural land.

As a general rule, each owner is responsible for retaining the portion of earth that they (or the previous

land owner) have altered from the natural ground level. This could be fill placed on top of the natural ground level or excavation below the natural ground level.

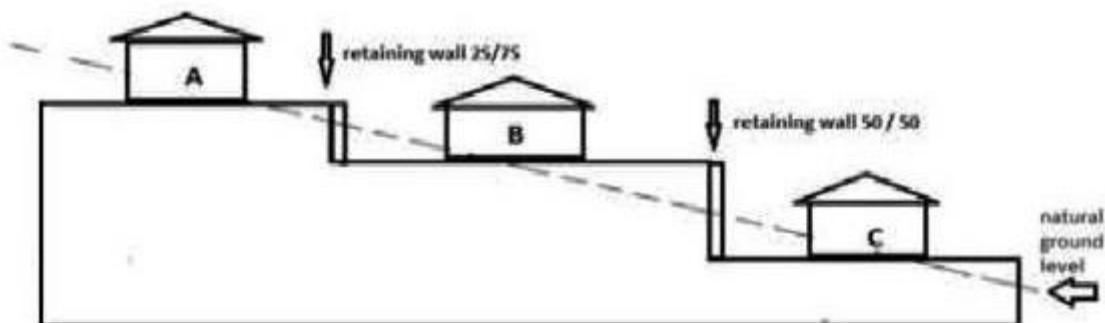
If a land owner is experiencing loss or damage because their neighbour has altered the natural state of the land, even though their neighbour has a responsibility to support the land, the land owner has an obligation to mitigate (minimise) their damage. If action is not taken to mitigate damage, any claim they may have may be affected.

Rather than each owner building a separate wall to retain what they have filled or excavated, it is usually more practical and economical to build one retaining wall. It is therefore advisable to discuss your plans with your neighbours.

How is apportionment of cost determined?

Where one party fills and the adjoining owner excavates, each party is liable according to the proportion that the retaining wall supports the fill or excavation. For example, if one neighbour fills 300 mm above the natural ground and the adjoining neighbour excavates 700 mm below the natural ground, then the neighbour that fills is responsible for 30% of the cost and the neighbour excavating is liable for 70% of the cost of the 1 meter retaining wall.

Example 1: apportionment of costs when there are single retaining walls between properties



The cost apportionment that would apply in example 1 above is as follows:

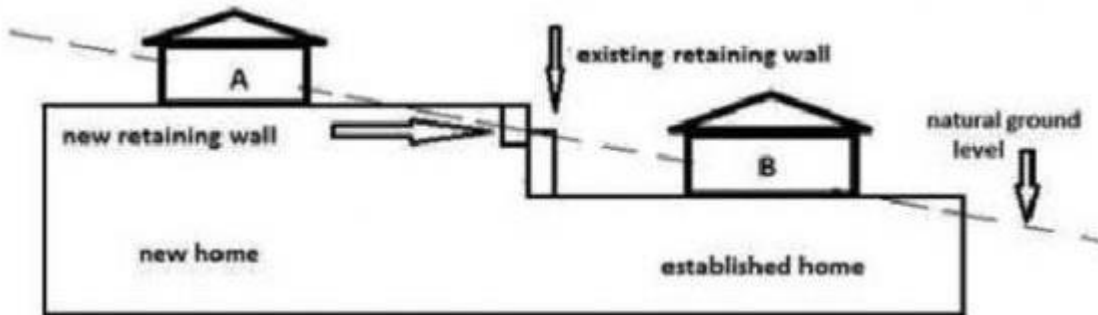
- The retaining wall between A and B: A is responsible for 25% of the cost and B is responsible for 75%.
- The retaining wall between B and C: The cost is shared equally between them as they benefit equally from the retaining wall.

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What happens when there is an existing retaining wall?

Example 2: existing retaining wall and subsequent fill

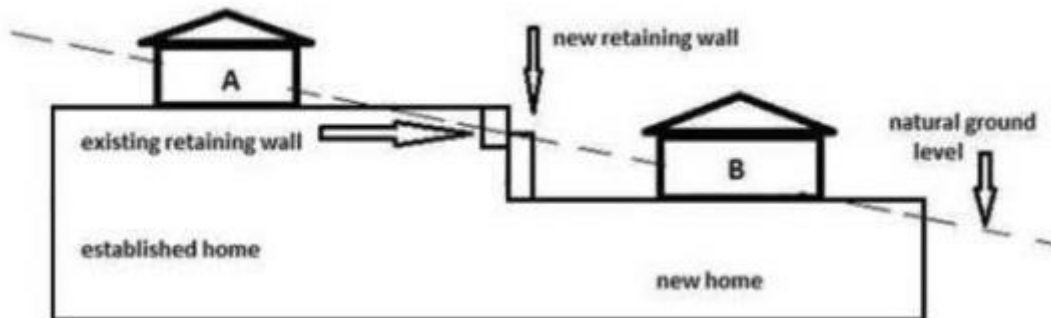
There is an existing retaining wall my neighbour has erected, but I want to level (fill) on my property (on the other side of the existing neighbour's retaining wall).



The neighbour (A) who proposes to fill (after obtaining development approval and/or giving notice, if required) is responsible for the cost of the retaining wall to hold the fill. Owner A also has an obligation to ensure the existing retaining wall is not overloaded. This may require piers to be sunk below the level of the existing retaining wall to maintain its integrity.

Example 3: existing retaining wall and subsequent excavation

There is an existing retaining wall my neighbour has erected, but I want to level (excavate) on my property (on the other side of the existing neighbour's retaining wall).



The owner (B) seeking to excavate will be responsible for the cost of the retaining wall to support the excavation they caused and also any costs to ensure that the previous retaining wall erected by the adjoining owner (A) is adequately supported.

Who is responsible to maintain a retaining wall?

Where both parties benefit from the existence of the retaining wall, as in example 1 above, then it is reasonable that both parties will contribute to the maintenance of the retaining wall according to the proportion of the benefit they receive. However, over time and as properties change hands, it can be difficult to know what the gradient of the natural ground level was, who actually altered it, and to what extent. While

councils may need to give approval for repairs, it is not the role of councils to determine the proportion of benefit and consequent apportionment of costs.

If the erection of the retaining wall is due to solely to one neighbour affecting the natural state of the land, as in examples 2 and 3 above, then the party affecting the natural state of the land is responsible for repairs and maintenance. That is, each owner (and subsequent owner of that property) is responsible to maintain the wall that benefits them.

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The duty to minimise damage

Even if it is the responsibility of one owner to repair a retaining wall, if a neighbour is experiencing loss or damage due to a faulty, deteriorating or damaged retaining wall, that neighbour has an obligation to mitigate their damage.

Do repairs need development approval?

As repairing or altering a retaining wall is classified as development, consideration must be given to whether development approval is needed prior to any work being commenced. Check with your local council. Generally, the principles outlined above under **Development approval** apply. However, if the repairs are minor, using similar materials and not relating to the stability of the wall, formal approval may not be required.

Boundary issues

When a single wall is proposed

Where it is proposed to build a single retaining wall between properties for the benefit of both land owners, then, if the neighbours agree, the wall can straddle the boundary. Costs are apportioned according to the benefit received.

When there are two walls

If there is no agreement between neighbours, or if there is an existing retaining wall, as in examples 2 and 3 above, then a retaining wall must be built solely on the property of the person required to build the wall. It is not only the visible wall that must be on the builder's property; the footings must also not go into the neighbour's property.

When a wall is built on the wrong side of the boundary

If a retaining wall has been built on the wrong side of the boundary (this sometimes occurs, for example, when a developer has built adjoining properties), two issues arise: who is responsible to maintain the wall, and encroachment.

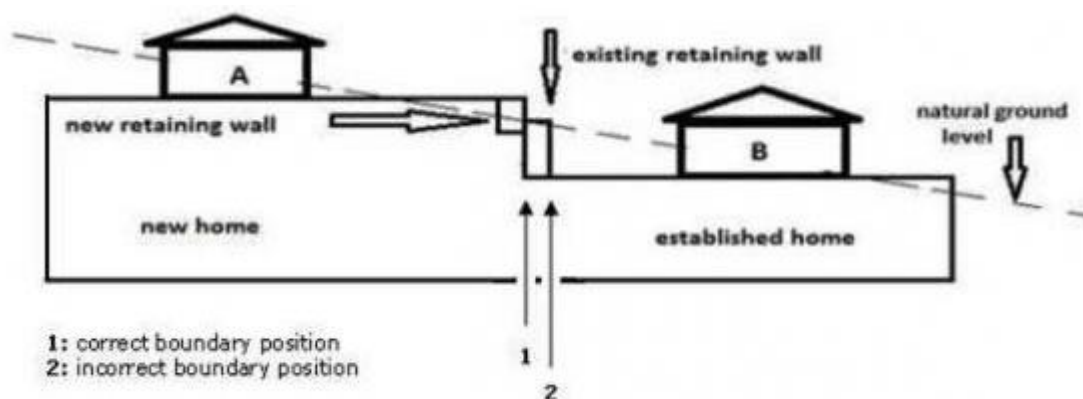
Regardless of which side of the boundary the wall is, the owner receiving the benefit of the wall is responsible for maintaining it. In example 4 below, owner B would be responsible for the wall even if it had been built with boundary position 2 (on the neighbour's property).

If the footings of the retaining wall go onto the neighbour's property, this may be an encroachment.

Walls bordering council land

If the proposed retaining wall is on the boundary of council land, for example, the footpath reserve, then the whole wall, including the footings, must be on your land and not on council property.

Example 4: correct and incorrect boundary positions



The role of councils

Councils cannot:

- resolve disputes about apportionment of costs when building or repairing a retaining wall
- say who is responsible to build or repair a retaining wall.

Councils will not:

- require repairs to retaining walls except in genuinely urgent cases.

The role of councils in relation to retaining walls is:

- to consider applications where development approval is required
- to ensure specifications in applications are to appropriate standards