

Retaining walls

A retaining wall is a structure built to retain a difference in ground levels. While a retaining wall can serve as the footing for a fence, the wall itself is not considered to be a fence and is covered by different laws. For information about fences, see our [Fences and the Law](#) booklet.

The law about retaining walls is principally found under the common law of **nuisance**, the Planning, Development and Infrastructure Act 2016 (SA) (**PDI Act**) and the Planning, Development and Infrastructure (General) Regulations 2017 (SA) (**PDI Regulations**).

Before any work in relation to a retaining wall is started, two questions must be answered:

- Is **development approval** required?
- Must **notice** be given to the neighbouring land owner?

Development approval

Any **excavation** or **filling** of land associated with constructing a building or other structure will usually need development approval. Details of the retaining wall for the excavation or fill must be included in the development application for the proposed structure.

When a retaining wall is being built for other purposes, such as landscaping, or when it is proposed to demolish, remove, repair or alter an existing retaining wall, then development approval from the **relevant planning authority** may still be required. Who the relevant planning authority is will depend on the nature of the development, but it will usually be the local council or a State Government planning entity.

Development approval is not usually needed if the wall retains a difference in ground levels of one metre or less. However, a retaining wall of one metre or less may still need approval if it is in a particular zone or council area. You should **ask your local council** if approval is required. Note that it is the overall difference in ground levels that is measured - if two or more retaining walls (each less than one metre high) are used together in a tiered fashion, the overall difference in ground levels must be less than one metre, otherwise approval will be needed.

If there is a fence on the wall, approval will be needed if the total height of the retaining wall plus the fence is more than 2.1 metres (measured from the lowest side of the retaining wall).

Notice

If the proposed construction of a retaining wall will **affect the stability** of the neighbour's land, and **access** to the neighbour's land will be needed to address the instability, then the neighbour **must be given notice** of the proposed work and the need for access.

Work that is treated as affecting the stability of neighbouring land includes:

- fill within 600 mm of the boundary, unless it is 200 mm or less in depth or height and for landscaping purposes [PDI Regulations reg 64(2)(c)]
- an excavation which intersects a notional plane extending downwards at a slope of 1 vertical to 2 horizontal from a point 600 mm below natural ground level at a boundary with an adjoining site [reg 64(2)(a)] as shown in the Figure 1 diagram.

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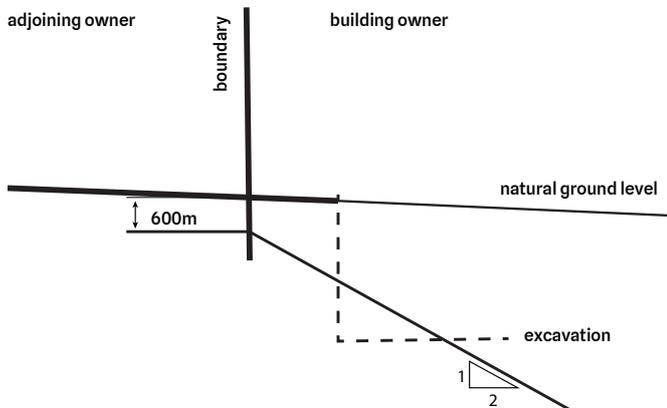


Figure 1. Schedule 10 PDI Regulations

What sort of notice is required?

Notice of the intention to perform the work and the nature of that work must be given to the owner of the adjoining land at least **20 business days** before the work commences [PDI Act s 139; PDI Regulations reg 64(2a)(b)]. A Form 1 Initial Notice to Owner of Affected Site [Schedule 10A of the PDI Regulations] must be used to give notice. It must have sufficient detail about the proposed work, as well as how long the work is estimated to take.

What can a neighbour do?

If the affected neighbour has concerns, they may engage a **professional engineer** to provide a report, along with plans and specifications, on the need to shore up any excavation or to underpin, stabilise or otherwise strengthen the foundations of any building. The person proposing to do the work must comply with the engineer's advice and give **notice of at least one business day before entering the adjoining land** to do the proposed work [PDI Act s 139(2)(c); PDI Regulations reg 64(2b)]. They are also required to pay the reasonable costs of obtaining the report, plans and specifications. Payment can be enforced by an application to the Environment, Resources and Development Court.

If the neighbour has requested that work be carried out, as specified by a professional engineer, the person building the wall may be able to obtain some payment from the neighbour towards the work, either by negotiation or by application to the Environment, Resources and Development Court. This may occur, for example, when the neighbour will benefit from the performance of the work specified by the engineer.

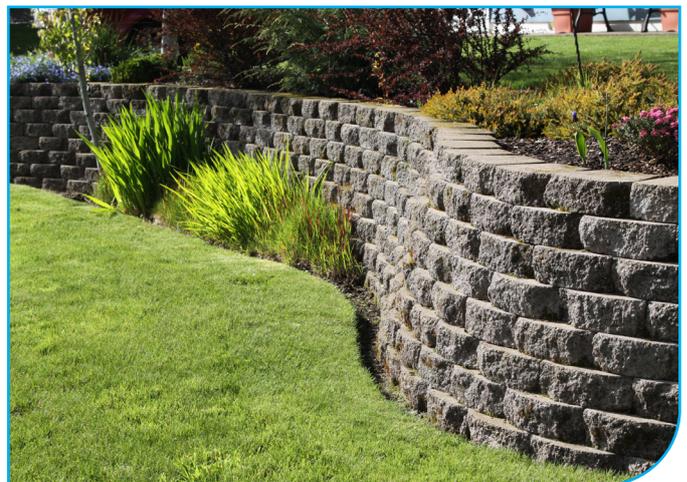
A land owner who has been served a Form 1 Initial Notice and believes they need more time to obtain engineering advice should, in the first instance and if possible, discuss the matter with the person proposing to do the work. If more time is not agreed, the land owner may apply to the Environment, Resources and Development Court to stop commencement of work until necessary engineering advice has been obtained.

What if notice was not given?

A person who performs work that is treated as affecting the stability of neighbouring land without giving notice under section 139(2) of the PDI Act, or who fails to carry out engineering work required by the owner of the affected land, may be **fined up to \$10,000** [s 139(4)].

If required notice was not given before work was done, the affected neighbour may apply to the Environment, Resources and Development Court to have further work done to ensure the stability of their land is not affected.

It is not the role of local councils to check or enforce the service of notice in relation to work that may affect the stability of neighbouring land. However, if a relevant planning authority has received a development application that includes a retaining wall, the relevant planning authority may attach an advisory notice to its approval, reminding the owner that they may need to provide notice under s 139 of the PDI Act by the Form 1 Initial Notice.



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Easements and encumbrances

Before commencing any building work, you should check whether there are any **easements** or **encumbrances** on the property's Certificate of Title that could be affected by the proposed retaining wall. If so, you must obtain **approval** from the person or entity who holds or benefits from the easement or encumbrance before commencing work. If development approval is required for the retaining wall, you should indicate in your application that you have permission from the person or entity who holds or benefits from the easement or encumbrance for the proposed construction.

Who is responsible for erecting a retaining wall?

Land in its natural state needs no support. It is only when the **natural state of the land** is altered that support is required. Any land owner 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) altered from the natural ground level. This could be fill placed on top of the natural ground level or excavation below the natural land.

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**.

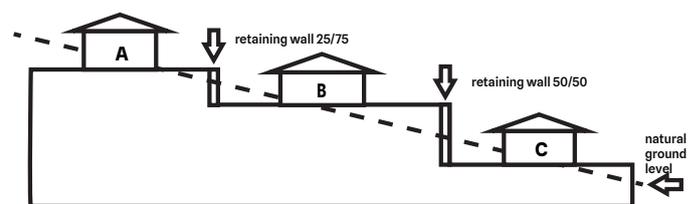
How are costs apportioned?

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 metre retaining wall.

By way of further example, the cost apportionment that would apply in Example 1 below is:

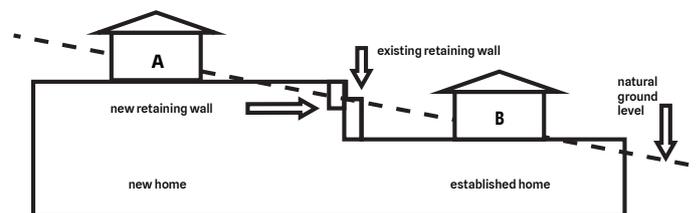
- The retaining wall between A and B
A is responsible for 25% of the cost and B is responsible for 75%
- The retaining wall between B and C
The cost is shared equally between them as they benefit equally from the retaining wall.



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

What if there is an existing retaining wall?

Suppose there is an existing retaining wall on a neighbouring property, and a new homeowner wants to level (fill) the property on the other side of the existing retaining wall, as shown in Example 2 below.

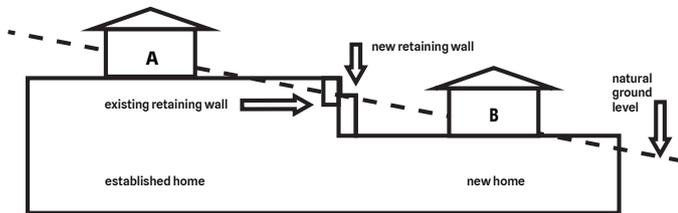


Example 2: existing retaining wall and subsequent fill

The homeowner (A) who proposes to fill is responsible for the cost of the retaining wall to hold the fill. A must also ensure that 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.

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Suppose there is an existing retaining wall on a neighbouring property, but a new homeowner (B) wants to level (excavate) the property on the other side of the existing retaining wall, as shown in Example 3 below.



Example 3: existing retaining wall and subsequent excavation

The homeowner (B) seeking to excavate is 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.

The existing fill retaining wall should have been built to allow for some excavation on the adjoining property. If this did not happen and stabilising work is needed, B may be able to argue that A should contribute to the cost of this work.

Who is responsible for maintaining a retaining wall?

Where **both parties benefit** from the existence of the retaining wall, as in the Example 1 diagram, 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 relevant planning authorities may need to approve repairs, it is not the role of such authorities to determine the proportion of benefit and consequent apportionment of costs.

If the erection of the retaining wall is due solely to one neighbour affecting the natural state of the land, 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 for maintaining the wall that benefits them**.

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, or else any claim may fail.

Do repairs need development approval?

Generally, the development rules and principles that apply to erecting a retaining wall (discussed earlier under 'Development approval' and 'Notice') also apply to repairs and alterations. If repairs are minor, using similar materials and not relating to the stability of the wall, formal approval may not be required. Check with your local council.

Boundary issues

When a single wall is proposed

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

When there are two walls

If neighbours cannot agree, or 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 building it. 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

Sometimes a retaining wall is built on the wrong side of the boundary. This can occur by accident - for example, when a developer builds adjoining properties. Regardless of which side of the boundary the wall is, the **owner receiving the benefit of the wall is responsible** for maintaining it.

If any part of a retaining wall goes on to neighbouring property, it is an **encroachment**. The Encroachments Act 1944 (SA) provides for the adjustment of boundaries or compensation where walls encroach on adjoining land. Neighbours may negotiate to resolve the issue or an application may be made to the Supreme Court.

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Walls bordering council land

If the proposed retaining wall is on the boundary of council land (for example, a public footpath) then the whole wall, including the footings, must be on the homeowner's land and not on council property.

Emergency work

The PDI Act allows for emergency orders to be made if an authorised officer of the local council or relevant planning authority determines there is a **threat to safety** arising out of the condition of a retaining wall or an excavation. If it is not clear whose responsibility the work is, an authorised officer will usually serve notice on both land owners, as it is not the role of the relevant planning authority to apportion responsibility.

An order may require the building owner:

- to evacuate the land or building
- not to conduct or allow specified activities
- to stop a specified activity immediately
- to carry out building or other work
- to prohibit the occupation of a building or land or the use of a building or land.

An owner can appeal the order within 14 days after the order is received or longer if granted an extension of time by the court [PDI Act s 155(11)]. It is an offence to contravene an emergency order, with a maximum penalty of \$20,000 [s 155(13)].



The role of relevant planning authorities

Relevant planning authorities (such as local councils):

- consider applications where development approval is required for a retaining wall, and
- ensure specifications in applications are to appropriate standards.

Relevant planning authorities cannot:

- resolve disputes about apportioning costs when building or repairing a retaining wall, or
- determine responsibility for building or repairing a retaining wall.

Relevant planning authorities will not:

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

Disputes

The following disputes are dealt with in the Magistrates Court (Minor Civil Action jurisdiction), because they are neighbourhood disputes arising under the common law of nuisance:

- responsibility for building a retaining wall
- responsibility for damage caused by failure to support land after the natural state of the land has been altered
- responsibility for repairing a retaining wall
- apportionment of costs when building or repairing a retaining wall.

Disputes about development applications and notices issued under section 139 of the PDI Act are dealt with in the Environment, Resources and Development Court.

Disputes about a retaining wall encroaching on neighbouring land are dealt with in the Supreme Court.

While free initial advice may be obtained from the Legal Services Commission or community legal services, you may need to see a private lawyer about such matters.

Community mediation may also help resolve neighbour disputes at an earlier stage and avoid court action.