



Boundaries and retaining walls

Property boundaries can be contentious. It can be difficult to work out where an actual boundary is, particularly when it may have been agreed on with the shake of a hand.

BRANZ has recently noticed an increased interest in property boundaries, both between neighbours and with adjacent public spaces. Usually the queries are about how to accurately locate a boundary, the legal ramifications of boundaries and what owners can do on their own property.

Interest has spiked in one territorial authority jurisdiction in particular following council plans to change its policy of maintaining council land that is crossed to access private properties.

This council's policy for the past century or so had been to share the costs of maintenance and upkeep with property owners. It is now looking to hand all costs and responsibility to the homeowners.

Many of the accessways are very old and in need of upgrading, and some have support structures such as retaining walls that may also be near or at their end of life. This makes it critical that the exact location of the boundary is established so the property owner – or prospective owner – can determine any potential financial responsibilities they may have.

It is not uncommon to find signs of a survey having been undertaken at some stage. The most obvious indicators are pegs – usually numbered, white-painted,



square timber pegs in soil – commonly seen at the corners of a property section or along a boundary where there is a change of direction.

Other markers that may be found include discs in concrete or posts, bolts, plugs, rods and tubes. Be aware, however,

that these are not only found at ground level. They may also appear on vertical surfaces such as concrete walls.

Employing a cadastral surveyor

To the layperson, the relevance of these markers can easily be misconstrued and

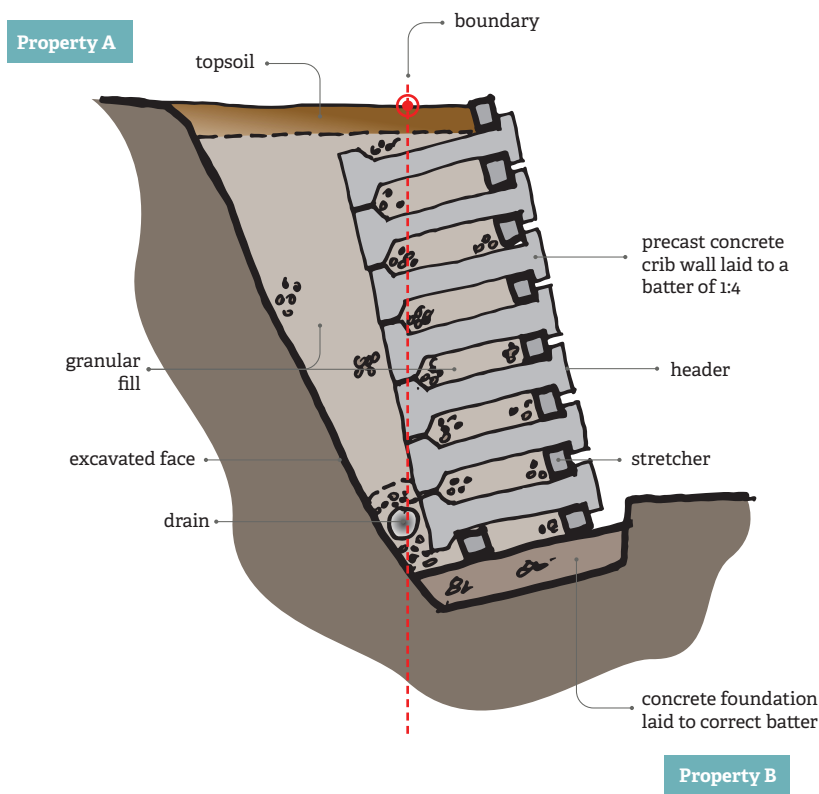


Figure 1. Cross-section showing the boundary within the retaining wall.

it can be dangerous to assume their meaning. While they may provide an initial indication of boundaries and a sense of comfort or concern, it's important to remember the markers may have been disturbed or moved or may be out of date and superseded by a more recent cadastral survey.

The only safe option is to engage a licensed cadastral surveyor to physically mark the exact current boundary locations. The surveyor will be able to locate and identify each boundary to a high degree of accuracy and record it in terms of the cadastre – the network of survey and boundary marks.

This is an up-to-date, parcel-based land information system containing a record of interests in the land, including rights, restrictions and responsibilities that apply.

A non-licensed surveyor, who may be satisfactory for tasks such as a building

survey or set-out or plotting various other physical features of interest, cannot undertake cadastral surveying.

Boundary retaining walls

A boundary retaining wall has usually been constructed on a natural sloping hillside and the general rule of thumb is that it is entirely built on the property of the party that will benefit from its construction.

This benefit may be at the foot of the wall created by excavation into the line of the original hillside or a flat area at the top created by the backfilling of the space behind the retaining wall structure – that is, on top of the slope of the original hillside.

Determining the legal boundary

The unknown factor with most retaining wall structures is the accuracy of the location of the legal boundary when they

were originally built. With older walls, in particular, the builder may have set it out relative to an existing boundary fence – many of which are notoriously inaccurate.

The wall could also have been located based on an informal verbal agreement between neighbours or an educated guess. So it's not always certain that the structure is even entirely on one side of the boundary or the other until the boundary is located.

One of the property owners must engage a surveyor to establish the position of the boundary. I've heard of two adjacent neighbours engaging separate surveyors who produced results a few millimetres apart, but they were deemed to be within acceptable survey tolerances.

When the survey is completed, several scenarios can exist. The boundary can be neatly located at the top or bottom of the retaining wall or sometimes a considerable distance from the wall, but the ownership of the wall is definitively established. More problematic is when the boundary is located within the depth of the wall structure (see Figure 1), essentially meaning that both parties share ownership.

It may well be the party benefiting from the retaining wall – who has gained the extra usable land – will own the major portion of the structure and will accept the responsibility and cost of maintenance.

If joint ownership is established, the best course of action is for both parties to meet, discuss the situation and try to find some common ground (pun apology!) that they can both live with.

However, when they cannot reach an acceptable agreement, the next step is for the parties to take legal advice. Hopefully this will facilitate an amicable agreement.

While these situations are essentially civil matters, there are some disputes that escalate and several have made it as far as the Environment Court for a final determination. Sometimes they even make it to the front page of the papers too – and most people don't want to find themselves there! ◀