

Stormwater Policy 2016

Management of Public and Private Drains

South Taranaki District Council



February 2016



South Taranaki
Alive with opportunity

Executive Summary

The South Taranaki District regularly experiences high rainfall events and can expect the frequency and intensity of these to increase with climate change.

Extreme rainfall events, inadequate stormwater systems or a combination of both, can result in damage to the built environment including the South Taranaki District Council's (the Council) infrastructure and private homes and businesses, which poses a risk to the health and safety of the general public.

The Council's stormwater systems include some urban streams and rivers, and the urban stormwater reticulation system, which consists of pipes and drains.

The Council has no formal flood protection schemes.

Council's Role and Responsibility

Where the Council has constructed drainage systems, or taken ownership or maintenance responsibilities of drains, then the Council has an obligation to maintain and/or renew such systems in order to meet the defined level of service for performance. This may require access to, and works on or over, private property in order to give effect to these responsibilities.

The stormwater system can be categorised into two parts: (1) a natural component and (2) constructed stormwater infrastructure.

The constructed stormwater network provides channels to drain stormwater and rain runoff from roads and properties in the built up areas, predominantly for the eight towns of the District. This network includes pipes, channels, and overland flow paths which convey stormwater to receiving water courses or the sea. Individual properties are required to discharge stormwater either to onsite soakage and/or to the road channel as part of the primary drainage system.

In rural areas a reticulated system is not normally provided by the Council.

The Taranaki Regional Council (TRC) is responsible for management and water quality monitoring of natural streams, rivers, wetlands and water courses within Taranaki and where agreed with the relevant Territorial Local Authority (TLA), some lower river reaches in urban areas, and some flood protection schemes (currently North Taranaki only, by agreement with the New Plymouth District Council).

Confusion arises in urban areas as to the responsibility for some drains, eg whether maintenance of a given drain is the responsibility of the Council, TRC or the private land owner. The answer varies depending upon the status of the existing drain, based on various other factors.

The determination of whether a drain is public or private has insurance implications and hence significant liabilities for the Council and property owners.

Purpose of the Policy

The purpose of this Policy is to provide clarity to Council officers, contractors and agents, elected members and to the general public so that a consistent approach is used for the future management and maintenance of urban drains forming part of the stormwater network, for the following overarching reasons:

- a) to mitigate the risk of flooding and damage to property in our towns;
- b) to reduce risk of injury and death otherwise arising from flooding; and
- c) to meet our service levels.

Objectives

The specific objectives of this Policy are:

1. To clarify which drains are considered public;
2. To identify future maintenance responsibilities for those drains;
3. To enable clarity for property owners and Council officers regarding specific drains;
4. To create the basis for the legal rights of access for drain maintenance and the rights of private land owners;
5. To provide a basis for apportionment of related drain costs (capital, operational and maintenance); and
6. To enable determination of responsibilities and resolution of historic issues regarding drain maintenance.

Requirements of the Act

There are few statutes in New Zealand relating specifically to stormwater management. The key references are;

- Land Drainage Act 1908
Local Government Act 1974 (Sections 446, 447, 451, 459-462 inclusive, 467, 468)
and Local Government Act 2002
- Public Works Act 1981
- NZS 4404:2010 Land Development and Subdivision Infrastructure Standard

Policy

1.0 General

- 1.1 **Acceptance of Stormwater Discharge** – Residential properties are encouraged to use soak holes for stormwater disposal if soil conditions are suitable. If not, then the Council may permit connection to the kerb and channel.
- 1.2 The stormwater drainage network consists of private drains, public and natural drains, streams and rivers.
- 1.3 Public Drain (definition) – Guidelines are provided here as this is material to the Policy.
 - 1.3.1 Public Drain – A drain may be considered (or in some circumstances, declared by resolution of Council) a public drain if;
 - a) It fits the definitions for a “public drain” provided within the Local Government Act (1974); or
 - b) The drain is shown on the Council drainage system (GIS) and recorded as a public drain. [Note: It does not hold that because a drain is not recorded it can automatically be considered a private drain – refer to the clauses below]; or
 - c) The Council built and/or paid for the drain construction and did not pass the cost onto the owner or make agreement with the land owner or any other party to own and maintain the drain thereafter, or;
 - d) The Council has historically asserted ‘control and maintenance’ of a drain (effectively adopting it as a public drain); or
 - e) Where a drain serves multiple properties it may be a public drain provided it is not a common private drain; or
 - f) It is in the best public interest for the drain to have status as a public drain ie the drain predominantly provides ‘public benefit’ over ‘private benefit’.
- 1.4 Definitions – for all other definitions see Section 7.0.

2.0 Responsibilities

- 2.1 **Territorial Local Authority** – the Council shall endeavour to meet its Level of Service requirements relating to stormwater, but it shall not be liable for any loss, damage or inconvenience which the customer (or any person within the premises) may sustain as a result of deficiencies in the stormwater system.
- 2.2 **Taranaki Regional Council** – generally have responsibility for all natural waterbodies, waterways and watercourses including wetlands, administered through their Regional Fresh Water Plan.
- 2.3 **Property Owner** – these provisions apply to property owners in urban areas:

- 2.3.1 Any application for a stormwater service connection shall be made in writing to the Council. The applicant shall provide all the details required by the Council. An application shall be made whether or not a public stormwater pipe has already been laid up to the point of discharge. Charges may be payable by the customer.
- 2.3.2 A customer shall give ten (10) working days' notice in writing of his or her intention to demolish or remove a building connected to the stormwater. The demolition or removal shall not commence until a management plan detailing how stormwater control on the site will be maintained is approved. The Council may require drainage to be disconnected from the public stormwater drainage, if potential exists for contamination or soil erosion.
- 2.3.3 All water discharged to the Council's stormwater system must comply with the current TRC water quality guidelines. Refer to the Regional Freshwater Plan for Taranaki for guidance.
- 2.3.4 The customer shall allow the Council (with any necessary equipment), access to any public stormwater drain as necessary.
- 2.3.5 No person shall intentionally block a primary or secondary flow path on their premises or any other land.
- 2.3.6 No person shall intentionally enclose a water course or open drain without first checking the drain status with the Council and complying with the relevant TRC rules.

Note: (1) this may include 'covering in' of a water course; (2) a resource consent may be required.

3.0 Status of Drains

3.1 Public Drain

- 3.1.1 **Connection to Public Stormwater Drain** – No person other than the authorised or approved agents of the Council, shall without approval, make any connection to or otherwise interfere with any part of the Council's stormwater drainage system.
- 3.1.2 **Easements** – Where any public stormwater drain crosses private property an easement is required to be created and registered on the title. This shall apply for all new public stormwater works.

3.2 Private Drain

- 3.2.1 The customer's drainage system is governed by the Building Act provisions for piped private drains constructed within the property.
- 3.2.2 A customer shall not discharge to a neighbouring property in a manner which adversely affects or increases runoff to the other property.
- 3.2.3 A lower property is bound to accept natural runoff from a higher property or properties.

4.0 Maintenance Considerations

- 4.1 **Blockages and Restrictions** – A customer whose stormwater is not getting away or has other reasons to suspect a blockage or restriction, shall first call a drainlayer to clear and remove any blockage in their private drain.
- 4.2 If the drainlayer finds that the blockage is within the public stormwater drain, then the drainlayer shall contact the Council who shall clear and remove the blockage and clean up all affected areas. Provided that the blockage has not been illegally placed or forced downstream into the public stormwater in the act of clearing it from the private drain, or that the customer has not been negligent in discharging a non-acceptable item in the stormwater, then the Council shall reimburse the customer for actual and reasonable drainage costs. If otherwise, the Council shall recover the costs of the unblocking work from the customer.
- 4.3 If a flow path is found to be blocked, the Council will require the removal of the cause of the blockage at the cost of the owner. Any flooding or other damage caused by a deliberate blocking of a flow path will be the responsibility of the person who blocked the flow path.
- 4.4 **Contamination and Spills** – Payment for the discharge of any contaminated stormwater from industrial/commercial properties shall be in accordance with the Council's applicable trade waste charges. Costs of cleaning up spills and unauthorised discharges into the stormwater system will be recovered from the offending party.
- 4.5 **Building Over Drains** – No building shall be constructed over any buried public drains whether on public or private land.
- 4.6 No building shall be built nearer than 1.5 metres from the centre line of any pipe or the depth of the pipe plus the diameter of the pipe plus 0.2 metres, whichever is the greater distance.
- 4.7 Where the previous clauses 4.5 and 4.6 are found to be impractical and the building cannot be sited elsewhere on the property or modified to conform with the above conditions and it is essential for the proposed building to be built on that part of the property, approval may be granted by the Council; subject to the building developer meeting the cost of any specific requirements and conditions imposed by the Council and the requirements of clause 4.8.

4.8 Diversion of drainage works (per S451 of LGA 1974)

- (1) If any person proposes to erect any building or to carry out any work in such a location and at such levels that the diversion, alteration, protection, or replacement of any of the drainage works of the Council appears to be essential to the erection of the building or carrying on of the work;
 - a. That person shall notify the Council of their proposals; and
 - b. If the Council is satisfied that it is practicable for its drainage works to be diverted, altered, protected, or replaced without material interference with the services for which it is responsible and that it is reasonable that this be done, it may enter into an agreement with that person as to the manner in which the drainage works shall be diverted, altered, protected or replaced.
- (2) The cost of said diverting, altering, protecting or replacing the drainage works of the Council shall be borne by that person and all other costs which the Council may incur in any way incidental thereto shall be paid to the Council by that person.
- (3) If that person fails to comply with any condition specified in any such agreement, he commits an offence against S451 of the LGA 1974.

5.0 Development and Subdivision Considerations

- 5.1 Where a new public stormwater is required as part of a subdivisional development, the developer shall provide all the drainage works subject to the approval of the design and construction of the works; this will generally mean compliance with the Council's Code of Practice, and compliance with the associated provisions in the District Plan.
- 5.2 Where the property in some manner provides for the drainage of other land beyond its boundaries, a management plan indicating how this drainage will satisfactorily be accommodated must be submitted to the Council for approval. Costs for reviewing such proposals must be borne by the subdivider.
- 5.3 On land to be developed where a stormwater drainage pipe, channel, watercourse or otherwise provided pathway for runoff from the road or upstream properties exists, adequate provision must be made during site redevelopment to convey this water to a point downstream of the property. This provision must be determined in consultation with the Council's Development Control Engineer.

6.0 Enforcement

- 6.1 **Breaches** – In the event of a breach of this Policy or other legal requirements relating to stormwater management, the Council may serve a defect notice on the customer advising the nature of the breach and the steps to be taken within a specified period, to remedy it. If, after the specified period, the customer has not remedied the breach, the Council may charge a reinspection fee.

- 6.2 If the breach is such that safety considerations, or risk of consequential damage to the Council's assets could occur where that delay would create unacceptable results, the Council may take immediate action to rectify the defect and recover all reasonable costs from the offending party.

7.0 Definitions

Authorised Officer means any person appointed by the Chief Executive of the Council for purposes of acting as an Authorised Officer under this Policy.

Council means the South Taranaki District Council.

Stormwater drain is a pipe, culvert or open drain or channel that conveys stormwater. A drain can be a piped system or an open drain (including culverts).

A watercourse is a natural channel which has not been subject to major alterations by engineering works.

An enclosed watercourse is a watercourse which has been piped.

A private stormwater drain is a drain located on private property which can convey runoff from that property and other properties upstream up to its connection to the public drain. Natural watercourses within private lots are considered part of the private drainage system except where some other authority has accepted administrative responsibility for that watercourse.

A common private drain is a private drain which services more than one property and by agreement passes over multiple private properties (typically recorded as private easements).

A public drain is any drain on public land (including roads) which conveys water from public land and/or several properties, which is not a private drain. It is also a drain on private property that has been designated to be a public drain by the Council or which has been declared a public drain under section 462 of the LGA 1974. See also 1.3.1.

Drainage catchment is an area from which runoff is ultimately conveyed through a common discharge outlet.

Primary flow path is the system of pipes and open drains intended to convey stormwater to a discharge point into a natural water body.

Secondary flow path is the route taken by stormwater when the capacity of the primary flow path is exceeded or restricted by blockage.

Level of service is a concept relating to the severity of the storm with a flow capacity of the primary flow path. It provides measurable performance standards on which the Council undertakes to dispose of stormwater originating from public land, roads and private properties.

Level of protection is a concept relating to the severity of the storm with a combined flow capacity of the primary and secondary flow paths.

Flood plain is the land adjacent to a waterway that gets used as a flow path when the stream or river cannot be contained within its average flow banks.

Flood hazard zone is an area identified that will become inundated in the event of flooding.

Catchment Management Plan is a plan showing the main stormwater drains within a defined catchment. It provides a framework for stormwater management. It links the strategic policies and the implementation of stormwater management and shows intended changes or improvements to the drainage system.

Stormwater Asset Management Plan is a strategic document outlining the Levels of Service to be delivered and an account of the assets involved in delivering that service and a ten year plan for their effective management.

Soak hole is a means of collecting stormwater within a property by providing a hole in the ground into which the runoff initially collects. Over time this water percolates into the groundwater system.

Service opening means a manhole, or similar means for gaining access for inspection, cleaning or maintenance of a public stormwater.

Territorial Local Authority (TLA) means a city council or district council.

8.0 Contacts

Operational queries on the content of this Policy or any matter arising from it should be directed in the first instance to:

The Operations Manager, Engineering Group; or
The Group Manager Engineering Services (for a determination on the status of a drain);
at the South Taranaki District Council on 06 278 0555 or 0800 111 323.

9.0 Review of Policy

9.1 This Policy shall be reviewed every five (5) years to ensure the Policy is effective and efficient at achieving the objectives.