

**THE MASTERTON AND SOUTH
WAIRARAPA DISTRICT COUNCILS'
CONSOLIDATED BYLAW 2012**

PART ELEVEN

WASTEWATER DRAINAGE

Masterton District Council

The Consolidated Bylaws 2012 comprising parts one to eighteen were adopted at the Council Meeting held on Wednesday 14th August 2013.

The Consolidated Bylaws 2012 came into force throughout the Masterton and South Wairarapa Districts on the 1st September 2013

South Wairarapa District Council

The Consolidated Bylaws 2012 comprising parts one to six and parts eight and nine and parts eleven to sixteen were adopted at the Council Meeting held on Wednesday 31st July 2013.

The Consolidated Bylaws 2012 came into force throughout the Masterton and South Wairarapa Districts on the 1st September 2013

MASTERTON DISTRICT COUNCIL AND SOUTH WAIRARAPA DISTRICT COUNCIL CONSOLIDATED BYLAW 2012

Part 11 – WASTEWATER DRAINAGE

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RELATED DOCUMENTS

Reference is made in this document to the following:

New Zealand Standards

NZS 3604: 1999 Timber framed buildings

NZS 9201: Model general Bylaws Wastewater Drainage model Bylaw

Part 23: 1999 Trade waste

New Zealand Legislation

Building Act 2004

Building Regulations 1992 (including the New Zealand Building Code)

Hazardous Substances and New Organisms Act 1996

Plumbers, Gasfitters and Drainlayers Act 1976 (2006)

Health Act 1956

Land Transfer Act 1952

Local Government Act 1974

Local Government Act 2002

Property Law Act 1952

Rating Powers Act 1988

Resource Management Act 1991
NZS 9201.23: 1999 Trade Waste
NZS 9201.7: 1994 Water Supply
NZS 3604: 1999 Timber Framed Buildings
New Zealand Waste Strategy 2002
Guidelines for the Safe Application of Biosolids to Land in New Zealand
NZS 4404: 2010 Land Development and Subdivision Infrastructure

Other Publications

Wairarapa Combined District Plan
Transit New Zealand Bridge Manual, 1994

The users of this Standard should ensure that their copies of the above-mentioned New Zealand Standards and referenced overseas Standards are the latest revisions or include the latest amendments. Such amendments are listed in the annual New Zealand Standards Catalogue which is supplemented by lists contained in the monthly magazine Standards Update issued free of charge to committee and subscribing members of Standards New Zealand.

FOREWORD

This Bylaw draws from the New Zealand Standard model Bylaw Wastewater Drainage from the NZS 9201 series. The NZS 9201 series are model Bylaws covering various matters under local authority jurisdiction. Local authorities are empowered under the Local Government Act 2002 to make Bylaws.

Reference should be made to Masterton and South Wairarapa District Councils Consolidated Bylaw 2012: Part 1 *Introductory* for definitions.

The structure of this document is as follows:

Chapter 1 - Wastewater drainage Bylaw

Chapter 2 - Wastewater drainage policy

Trade waste is the subject of a separate Bylaw, Part 12.

1 GENERAL

1.1 Scope and General

1.1.1

Chapter 1 is a Bylaw for wastewater drainage from both domestic and trade premises to a wastewater authority. In general, only matters which are not covered by existing legislation or regulations are included. It is intended to give the additional powers which the wastewater authority may require.

1.1.2

Chapter 2 is a policy for how a wastewater authority may interpret the legislation and the Bylaw in its day to day operation of the wastewater authority wastewater system for domestic customers, and also the domestic wastewater aspects of trade premises. Both Chapter 1 and Chapter 2 are designed to be a standard model, yet flexible enough to cater for the diversity of wastewater drainage matters.

CHAPTER 1 WASTEWATER DRAINAGE BYLAW

1.1 Introduction

This Bylaw is for wastewater drainage from both domestic and trade premises to a wastewater authority. The quality and quantity limits that separate domestic wastewater from trade waste are to be found in the wastewater authority's Trade Waste Bylaw.

1.2 Acceptance of discharge

1.2.1 Domestic wastewater

Every domestic premise shall be entitled to have its wastewater accepted by the WWA subject to:

- a) The premises lying within a "drainage district" if such an area has been designated by the WWA under the Local Government Act 1974 (LGA), and
- b) The premises lying within an area which is served by public sewers, and
- c) Payment of the appropriate rates and charges in respect of that premises in general and wastewater services in particular, and
- d) Fulfilment of the requirements of this Bylaw.

1.2.2 Trade waste

The acceptance of trade wastes is the subject of a separate Bylaw.

1.3 Approval to connect

1.3.1

No person other than the authorized agents of the WWA, shall without approval, make any connection to or otherwise interfere with any part of the WWA's wastewater drainage system.

1.4 Continuity of discharge

1.4.1

The WWA does not guarantee to receive wastewater without interruption, however the WWA will use all reasonable endeavours to ensure that any disruption is kept to a minimum.

1.5 Premises

1.5.1 Flow rate

The maximum instantaneous flow rate discharged from a domestic premise shall not exceed 2.0 litres/sec. The WWA may also set a maximum daily flow rate discharged from a domestic premise.

1.5.2 Prohibited characteristics

No wastewater with prohibited characteristics (as scheduled in the WWA Trade Waste Bylaw) shall be discharged into the WWA system.

1.5.3 Waste minimisation

In order to meet the principles of sustainable management as promoted by the Resource Management Act 1991 (RMA), the WWA recommends a customer fits the devices contained in Table 1.1 on all new installations.

Table 1.1 – Waste minimisation devices

Device	Value
Insert devices, e.g.: Dual flush toilet cistern	Flush 1 3 litres Flush 2 6 litres
Low flow shower heads Urinal flushing control	Max. 8 litres/min On-Demand Controller

1.5.4 Access

1.5.4.1 Access for inspection

The customer shall allow the WWA, or its agents, access to and about the point of discharge for the purposes of monitoring, testing, and maintenance work between 7.30 am and 6 pm on any day. The WWA shall give 24 hours previous notice to the customer of the intended entry.

Under emergency conditions, or for the purpose of ascertaining whether the drains are being misused, the customer shall allow the WWA free access to and about the point of discharge at any hour.

1.5.4.2 Non-complying connections

The customer shall allow the WWA with any necessary equipment, access to any area of the premises for the purposes of ascertaining whether non-complying connections have been made.

1.5.5 Prevention of inflow and infiltration

The customer shall prevent any stormwater or groundwater entering the wastewater drainage system. This includes roof downpipes, surface water run-off, overland flow, and sub-surface drainage.

For trade premises where stormwater cannot be separated from wastewater refer to the Trade Waste Bylaw.

1.6 Disconnection

1.6.1

A customer shall give 7 working days notice in writing of his or her intention to demolish or remove a building connected to the sewer. The demolition or removal shall not commence until the property has been disconnected from the sewer by the WWA.

1.6.2

A customer shall give 2 working days notice in writing to the WWA of his or her requirement for disconnection of the discharge connections if relaying of the private drain is required.

1.7 Public drainage system

1.7.1 General

With respect to building or loading over buried services, or excavation near public sewers, the restrictions described in 1.8.2 to 1.8.4 shall apply. Other restrictions may be applied by the WWA for the protection of the public drainage system after consideration of proposed work methods, depth of excavation, soil physical properties, and other site specific factors.

1.7.2 Building over buried services

1.7.2.1 Rising mains and trunk sewers

No building shall be built over a public rising main or trunk sewer, or closer than the greater of:

- a) 1.5 metres from the centre of any main or sewer, or
- b) The depth of the centre line of the sewer, plus the diameter of the sewer, plus 0.2 metres from the centre of that sewer, subject to compliance with 3.1 of NZS 3604.

1.7.2.2 Other public sewers

- (a) No building shall be built over a public sewer, whether on public or private land;
- (b) No building shall be built closer than the greater of:
 - (i) 1.5 metres from the centre of any public sewer, or
 - (ii) the depth of the centreline of the sewer, plus the diameter of the sewer, plus 0.2 metres from the centre of that sewer, subject to compliance with 3.1 of NZS 3604.
- (c) Subject to approval, a building developer may meet the cost of diverting the public sewer (including any manholes) in accordance with WWA standards;
- (d) Where a) b) and c) above 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 subject to the building developer meeting the cost of any specific requirements. These may include the provision of access manholes, pipe strengthening, ducting, additional support of the building's foundations and relocatable construction.

1.7.3 Loading or material over public sewers

No person shall cause the crushing load imposed on a public sewer to exceed that which would arise from the soil overburden plus a HN-HO-72 wheel or axle load (as defined by Transit New Zealand Bridge Manual).

No person shall place any additional material over or near a public sewer without application or approval from the Council or an authorised officer.

Service openings shall not be covered in any way unless approved. Removal of any covering material or adjustment of the opening shall be at the property owner's expense.

1.7.4 Excavation near public sewers

No person shall excavate, or carry out piling or similar work closer than:

- a) 5 metres from the centre line of any rising main or trunk sewer, or
- b) 2 metres from the centre line of any public sewer, without approval. Such approval may impose conditions on the carrying out of any work near the sewer.

1.8 Storage of hazardous materials

1.8.1

The occupier shall not store raw material, products or wastes containing corrosive, toxic, biocidal, radioactive, flammable, or explosive materials, or any material which, when mixed with the wastewater stream, is likely to generate toxic, flammable, explosive or corrosive materials in quantities likely to be hazardous, or any other material likely to be deleterious to the WWA wastewater system or the health and safety of WWA staff and the public, without taking all reasonable steps to prevent entry into the WWA sewer from leakage, spillage or other mishap.

1.8.2

The occupier shall comply with the requirements of the Hazardous Substances and New Organisms Act and Regulations.

1.9 Breaches and remedies

1.9.1 Defect notices

In the event of a breach of statutory or other legal requirements, the WWA may serve a defect notice on the customer advising its nature and the steps to be taken within a period or not less than 28 days, to remedy it. If, after the specified period, the customer has not remedied the breach, the WWA may charge a re-inspection fee.

If however the breach is such that public health, or safety considerations, or risk of consequential damage to WWA assets is such that delay would create unacceptable results, the WWA may take immediate action to rectify the defect, and recover all reasonable costs as set out in 1.10.2.

1.9.2 Remedial work

At any time after the specified period of 1.10.1 has elapsed, the WWA may carry out any remedial work required in order to make good the breach, and to recover from the person committing the breach all reasonable costs incurred in connection with the remedial work.

CHAPTER 2 WASTEWATER DRAINAGE POLICY

POLICY FOR THE DISCHARGE AND ACCEPTANCE OF WASTEWATER

2.1 Introduction

2.1.1

The discharge and acceptance of wastewater is subject to a number of Acts, Regulations, Bylaws, Codes and Standards the most relevant of which are listed below.

a) Statutory Acts and Regulations:

- Building Act 2004 [BA]
- Building Regulations 1992 (including the New Zealand Building Code)
- Hazardous Substances and New Organisms Act 1996
- Health Act 1956 [HA]
- Health and Safety in Employment Act 1992
- Land Transfer Act 1952
- Local Government Act 1974 [LGA]
- Plumbers, Gasfitters and Drainlayers Act 1976 (2006)
- Property Law Act 1952
- Rating Powers Act 1988 [RPA]
- Resource Management Act 1991 [RMA]
- Water Supply Protection Regulations 1961

b) Codes and Standards:

- New Zealand Building Code [NZBC]
- NZS 4404: 2010 Land Development and Subdivision Engineering

2.2 Domestic wastewater

2.2.1

No domestic wastewaters shall:

- a) Exceed the substance limits scheduled in the WWA Trade Waste Bylaw;
- b) Contain the substances prohibited in the WWA Trade Waste Bylaw.

2.2.2

Where part of domestic premises is used as an office or other trade related activity from which no trade waste could be produced, and which no other persons apart from those living at those premises use, then it shall be treated as domestic premises. Any trade activity which produces or has the potential to produce a wastewater shall be treated as being from trade premises.

2.3 Acceptance and duration

2.3.1 General

The WWA shall continue to accept wastewater from domestic premises once an approved connection to the public sewer has been made. Disconnection of the sewer is not an option available in the event of non-compliance with the law and/or Bylaws by the customer. Refer to 2.15 for remedies which are available.

For the customer's obligations refer to 2.13.

2.3.2 Change of ownership

In the event of domestic premises changing ownership, the new owner shall automatically become the new customer of that premise.

2.3.3 Trade wastes

Refer to the WWA Trade Waste Bylaw.

2.4 Application to connect

2.4.1 Application

2.4.1.1 Domestic wastewater

Every application for a wastewater service connection shall be made in writing on the form provided, together with the prescribed charges. The applicant shall provide all the details required by the WWA. An application shall be made whether or not a public sewer has already been laid up to the point of discharge.

2.4.1.2 Trade waste

Refer to the WWA Trade Waste Bylaw.

2.4.1.3 Domestic wastewater and trade waste

Where an application has been accepted by the WWA which requires a new public sewer connection to be constructed from the existing public sewer to the point of discharge, the customer shall pay such charges or fees as fixed by the WWA for this work. The WWA shall supply and install the public sewer up to the point of discharge except as provided for in 2.4.2.

2.4.1.4

Refer 2.14 for payment of connection charges.

2.4.2 Subdivision

Where a new public sewer 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. These will be covered by Provisions of the Resource Management Act, NZS 4404:2010 Land Development and Subdivision Engineering or by way of Rules in the Combined District Plan.

2.4.3 Disused on-site wastewater treatment facilities

Where any septic tank or similar treatment system and associated soakage systems for waste disposal become disused or are disconnected from the site drainage system, the following works must be undertaken.

- a) The septic tank or treatment system and any effluent chambers to be uncovered and lids removed to give access to all compartments.
- b) All liquid and solid materials including sewage, water sludge and fat etc are to be removed from the wastewater system by a licensed septic tank

cleaning operator who is to dispose of the contents at an approved location.

- c) Ensure all drains from the dwelling or out buildings to the septic tank or treatment system have been sealed or disconnected from the septic system.
- d) The tank and any exposed effluent disposal structures etc are to be filled with suitable material such as earth, sand or clay etc. up to original ground level.

2.5 Point of discharge

2.5.1 General

The point of discharge from a customer shall be the point on the public sewer which marks the boundary of responsibility between the customer and the WWA, irrespective of property boundaries.

Unless otherwise approved there shall be one point of discharge only for each premises, and any private drain shall not extend by pipe or any other means to serve another premises unless it is a common private drain.

2.5.2 Single ownership

For single dwelling units the point of discharge shall be located at the point of physical connection to the public sewer, whether it be within a road, other public lands, or private land. The approval of more than one point of discharge must be by the WWA and also recorded on the drainage plan.

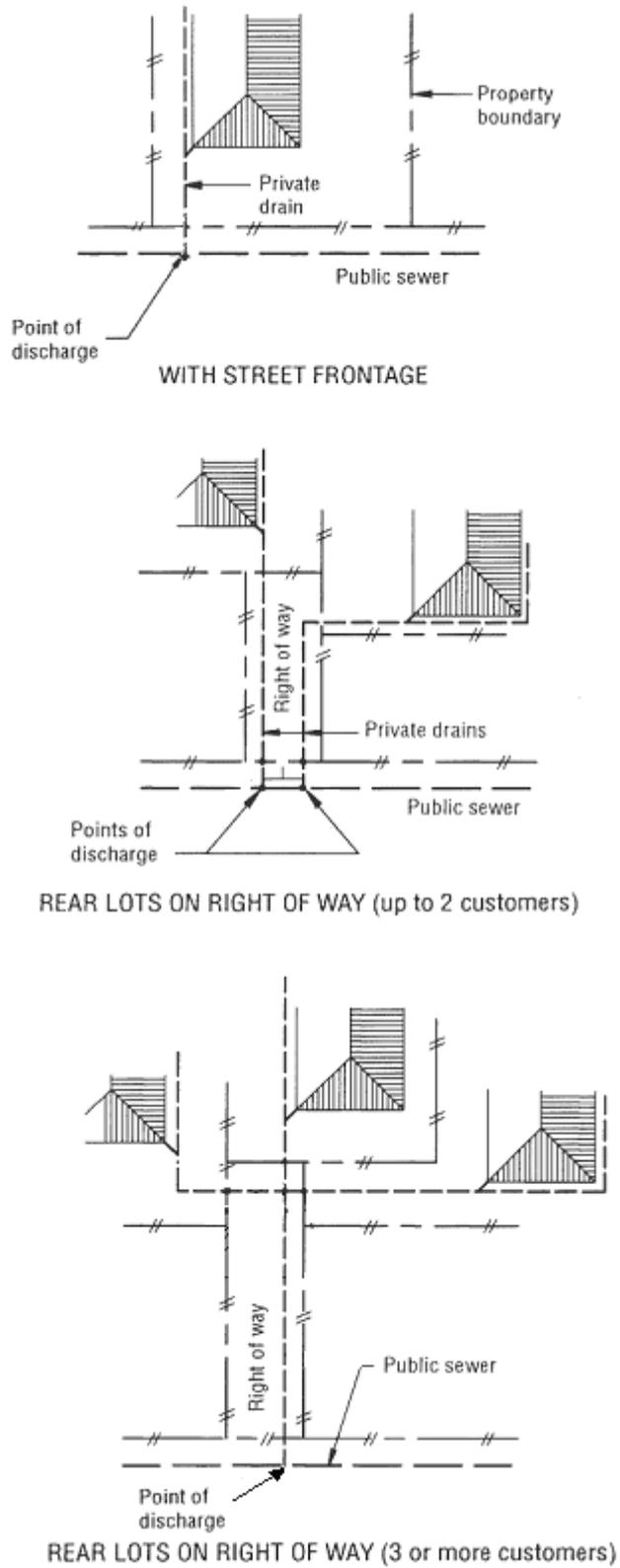


Figure 2.1 – Point of discharge location

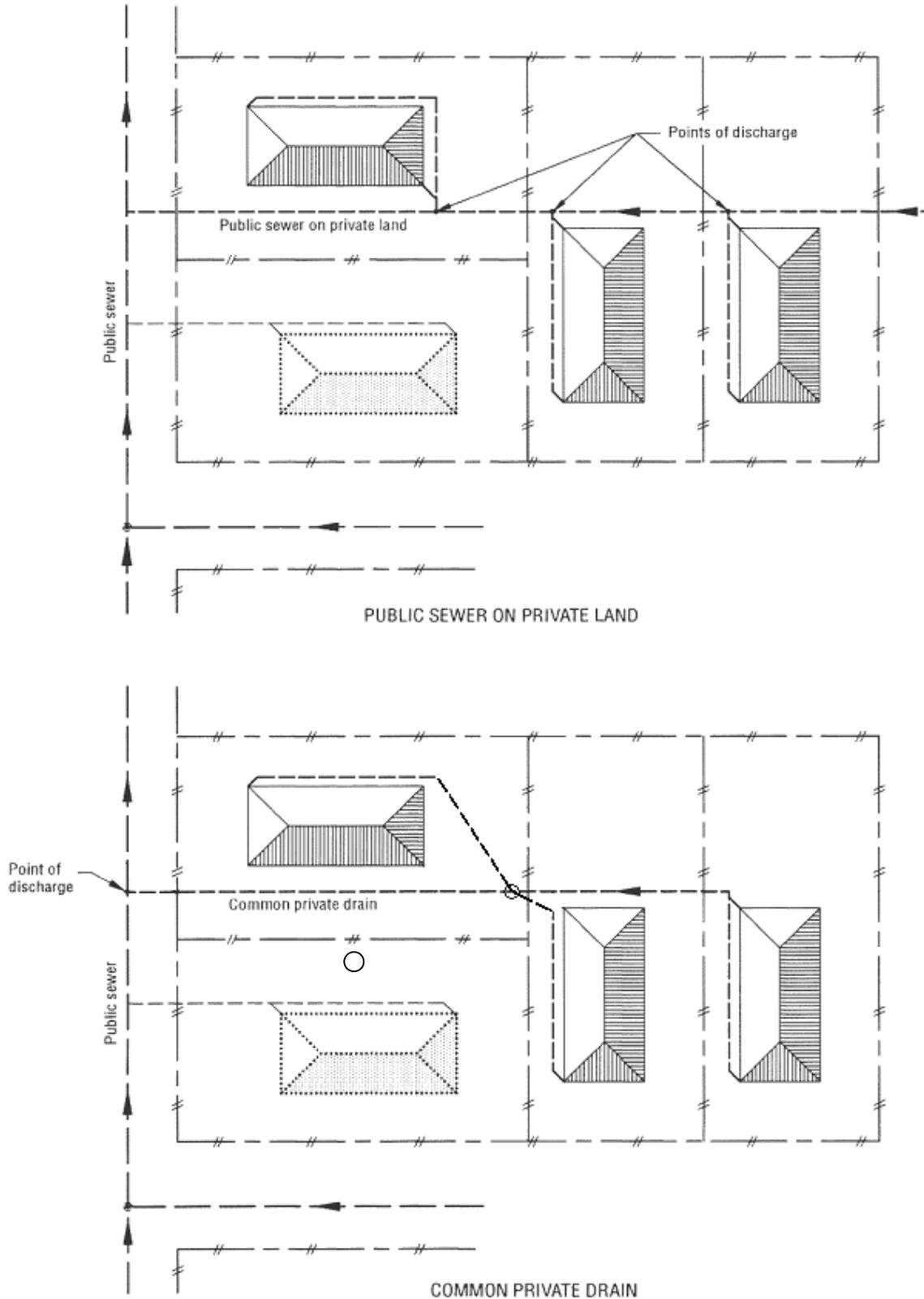
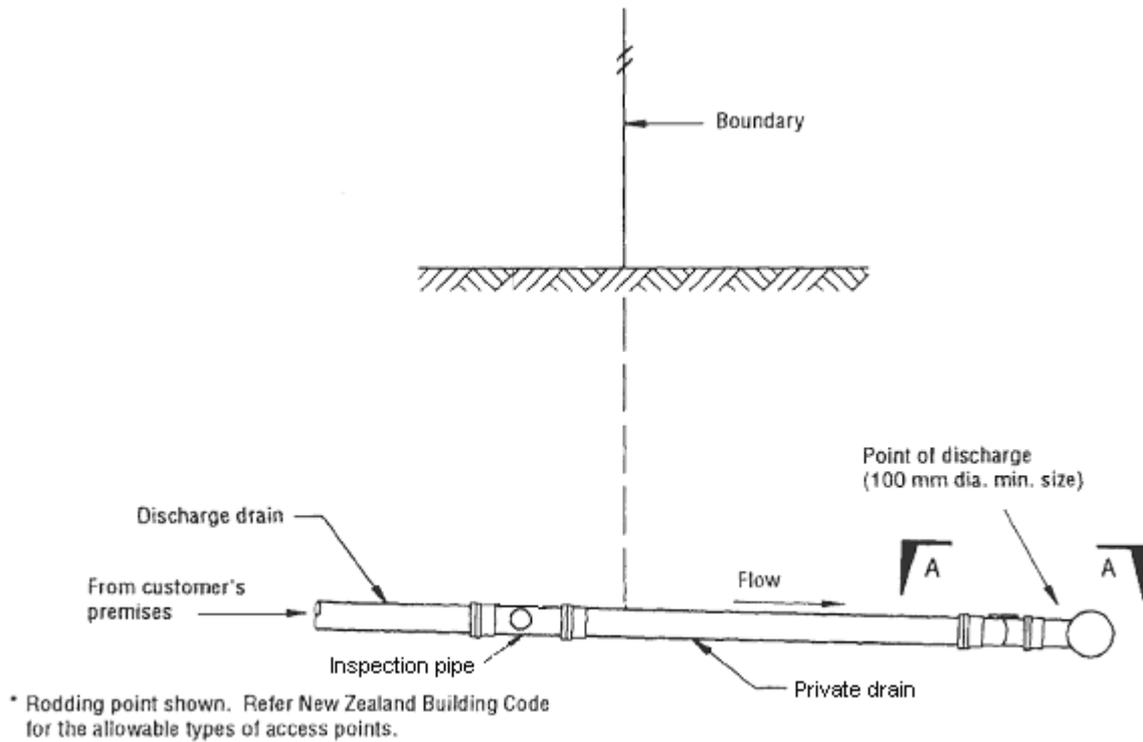


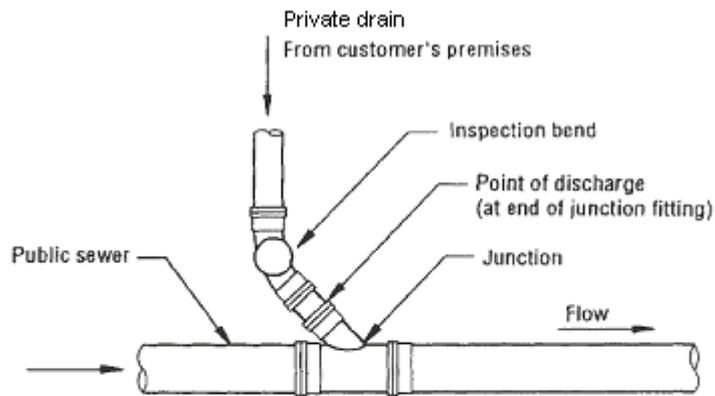
Figure 2.2 – Point of discharge location – single dwelling units

2.5.3 Layout

The typical layout at a point of discharge is shown in figure 2.2.



EXAMPLE 1 – DOMESTIC DISCHARGE



PLAN VIEW

EXAMPLE 2 – DOMESTIC DISCHARGE TO PUBLIC SEWER ON PRIVATE LAND and A-A FROM EXAMPLE 1

Figure 2.3 – Typical layout at point of discharge

2.5.4 Multiple ownership

2.5.4.1

The point of discharge for the different forms of multiple ownership of premises and/or land shall be as follows:

- a) For company share/block scheme (body corporate) – as for single ownership;
- b) For leasehold/tenancy in common scheme (cross lease), strata title, and unit title (body corporate). Where practicable each owner shall have an individual drain with the point of discharge determined by agreement with the WWA. If not practicable there shall be a common private drain which shall be incorporated as an additional provision in the lease agreement. In specific cases other arrangements will be acceptable subject to individual approval.

2.5.4.2

Each owner's point of discharge must be approved by the WWA and recorded on the drainage plan. Other arrangements shall be considered only where there are advantages to the WWA.

2.5.5 Common private drains

2.5.5.1

Common private drains shall serve a maximum of 7 single dwelling units depending on discharge unit loading under the design code, and may also have one point of discharge only (in common).

2.5.5.2

Common drains shall be registered against the certificate of title.

2.6 Level of service

The WWA shall provide wastewater services in accordance with the level of service contained in the annual plan of the Council.

2.7 Liability

The WWA shall endeavour to meet the level of service requirements of 2.6, 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 wastewater collection system.

2.8 Emergency

2.8.1

Natural hazards (such as floods or earthquakes) or accidents beyond the control of the WWA which result in disruptions to the ability of the WWA to receive wastewater, will be deemed an emergency, and exempted from the levels of service requirements of 2.6.

2.8.2

During an emergency the WWA may restrict or prohibit the discharge of wastewater for any specified purpose, for any specified period, and for any or all of its customers. Such restrictions shall be publicly notified. The decision to make and lift restrictions, and to enact additional penalties, shall be made by the Council, or where immediate action is required the officer of the WWA authorized for that purpose subject to subsequent Council ratification.

2.9 Maintenance and repair

Where it is not practical to notify the customer of a maintenance interruption to the point of discharge before work commences, the WWA may shutdown the point of discharge without notice, and the customer shall be advised as soon as possible.

2.10 Blockages

A customer, whose gully trap is overflowing or has other reasons to suspect a blockage, should contact the WWA immediately. The WWA will arrange to check the public sewer, and if necessary to clear and remove the blockage, and clean up all affected areas. If the blockage is within the customer's private drain the customer may be charged in accordance with the WWA current schedule of rates and charges.

If the blockage is found to be within the public sewer, then provided that the blockage has not been forced downstream into the public sewer in an act of clearing the private drain, or that the customer has not been negligent in discharging a non-acceptable wastewater, then the WWA shall cover all actual and reasonable costs. If otherwise, the WWA shall recover the costs of the unblocking work from the customer.

2.11 Trees

In the event of the roots of any tree on a customer's premises causing or being likely to cause damage, interference to the flow, or blockage to a public sewer the WWA procedure, shall follow that set out in LGA s.468.

NOTE – The law does not differentiate between a public sewer on private or public land, i.e. the occupier or owner cuts down or removes the tree at their expense with no compensation payable.

2.12 Working around buried services

2.12.1

The WWA shall keep and maintain drainage plans of the location of its buried services. This information shall be available for inspection during normal business hours at no cost to the user. Reasonable charges may be levied to cover the costs of making copies available.

2.12.2

Any person proposing to carry out excavation work shall view the as-built information to establish whether or not WWA services are located in the vicinity. At least 3 days notice in writing shall be given to the WWA of an intention to excavate in the vicinity of its services. Where appropriate the WWA may mark out to within 1.0 m on the ground the location of its services, and may nominate in writing any reasonable restrictions on the work it considers necessary to protect its services. The WWA may charge for the work marking out its services.

2.12.3

When excavating and working around buried services due care shall be taken to ensure the services are not damaged, and that bedding and backfill is reinstated in accordance with the appropriate WWA specification. Excavation within roadways is also subject to the permit process of the appropriate roading authority.

2.12.4

Any damage which occurs to a WWA service shall be reported to the WWA immediately. Repair costs may be charged for.

2.13 Customer's drainage system**2.13.1 General***2.13.1.1*

The customer's drainage system is governed by the Building Act from inside the building to the point of discharge. The WWA may not impose anything on the customer which is more onerous than is contained in the New Zealand Building Code.

2.13.1.2

The customer's drainage system shall be designed, installed and maintained, both in its component parts and in its entirety, to ensure that it complies with the Building Act and the New Zealand Building Code.

2.13.1.3

Drainage from premises constructed, or for which construction was commenced, prior to the coming into force of the Building Act, does not need to be upgraded to meet the requirements of the New Zealand Building Code. If however any work is required on the customer's drainage system, arising from:

- a) The issuing of a defect notice;
- b) Alteration to the premises;
- c) Change of use of the premises;

then any such work shall meet the requirements of the New Zealand Building Code.

2.13.1.4

Customers with discharges from premises not covered by the Building Act and the New Zealand Building Code shall nevertheless have a drainage system which complies with the Building Act and Code.

2.13.2 Inflow and infiltration

2.13.2.1

Stormwater shall be excluded from the wastewater system by ensuring that:

- (a) There is no direct connection of any stormwater pipe or drain to the wastewater system;
- (b) Gully trap surrounds are set above stormwater ponding levels (refer New Zealand Building Code G13), or secondary overland flow path flood levels;
- (c) Inspection covers are in place and are appropriately sealed.

2.13.2.2

Stormwater which is contaminated may be accepted as a trade waste discharge. Refer to the Trade Waste Bylaw.

2.13.2.3

For large impervious areas (e.g. stock yards or truck washing facilities), specific provision shall be made for a permanent barrier, which will prevent water from outside the confines of the facility from entering the wastewater system. This could be by way of a nib wall, speed humps, or appropriately graded surrounds.

2.13.2.4

Where it is impractical to cover a large impervious area, consideration shall be given to a system which detains run-off from the "first foul flush" for ultimate disposal to the wastewater system, with subsequent run-off disposal as stormwater.

2.13.2.5

Private drains shall be kept and maintained in a state which is free from cracks and other defects which may allow infiltration.

2.13.3 Pump stations

2.13.3.1 General

Private wastewater pump stations will be approved only where there are no practical alternatives for a gravity flow discharge to the public sewer.

2.13.3.2 Single ownership

A private wastewater pump station for a single dwelling unit represents an alternative solution in terms of the Building Act. As such, the customer (owner) will be required to demonstrate that the pump station complies with the provisions of the New Zealand Building Code when seeking a consent.

2.13.3.3 Multiple ownership

A private wastewater pump station serving more than one residential dwelling unit requires a compliance schedule as well as an annual building warrant of fitness in order to meet the requirements of the Building Act.

A "Common Pump Station Agreement" shall be required between the parties, including appropriate maintenance of rising mains. It shall be registered against the Certificate of Title of each party.

The combined rate of discharge to the public sewer shall not exceed the rate specified by the WWA.

2.13.4 *Swimming pools*

Customers with swimming or spa pools shall be required to demonstrate that the pool drain has been fitted with a flow limiting device to ensure the discharge does not exceed the maximum instantaneous flow requirement of 2.0 litres/sec.

2.14 Payment

2.14.1

The customer shall be liable to pay for the discharge of wastewater and the charges for infrastructure contributions and related works or services in accordance with the fees and charges which Council may determine from time to time by resolution, publicly notified.

2.15 Breaches and remedies

2.15.1 *Powers*

2.15.1.1

Powers to enforce penalties relating to the discharging of wastewater by customers are given to the WWA by a number of acts. The Local Government Act deals specifically with trade wastes. Other relevant pieces of legislation are more indirect in application. The Rating Powers Act allows for action to be taken when rates are unpaid, and payment for discharge can be treated as a rate.

2.15.1.2

The relevant legislation includes:

Local Government Act 1974 - Section 493, Part XLIV

Rating Powers Act 1988 - Part VIII

Health Act 1956 - Part II

Building Act 1991 - Part XI

2.15.2 *Failure to pay*

Any money owing for charges and rates for wastewater services becomes a charge on the land. An example of a Memorandum of Encumbrance and Deed of Covenant is given in schedule A and schedule B. The memorandum, once registered, will run with the land, and will bind successive landowners. Further, the memorandum specifically provides that when a person, bound by it, transfers the land, then that person ceases to have any liability or obligations under the memorandum.

SCHEDULE A

EXAMPLE OF A MEMORANDUM OF ENCUMBRANCE

MEMORANDUM OF ENCUMBRANCE FOR SECURING A SUM OF MONEY

..... of
(hereinafter together with his/her successors, assigns and personal representatives called “**the Owner**”) being registered as proprietor of an estate in fee simple subject however to such encumbrances, liens and interest as are notified by Memorandum underwritten in that parcel of land containing by admeasurement square metres more or less being Lot Deposited Plan and being all the land comprised and described in Certificate of Title

AND desiring to render the land available for the purpose of securing to and for the benefit of the **COUNCIL** the rentcharge hereinafter mentioned does hereby encumber the land for the benefit of the **COUNCIL** with the annual rentcharge of **TEN THOUSAND DOLLARS** (\$10,000) (plus GST) to be raised and paid at the times and in the manner following, that is to say in one (1) annual sum on the 1st day of 20..... and on the 1st day of.....in every year thereafter **PROVIDED ALWAYS** that if during the twelve (12) months immediately preceding the 1st day of in any year there shall have been no breach of any of the obligations of the Owner under the Deed, a copy of which is attached hereto, then the annual rentcharge payable on such 1st day of shall be reduced to **ONE DOLLAR** (\$1.00) **AND** the Owner covenants that he/she shall at all times perform and observe all the obligations and covenants as set out in the Deed.

AND PROVIDED ALSO that if and whenever the obligations of the Owner under the Deed shall have been duly and wholly complied with or shall by effluxion of time or otherwise become no longer enforceable then this Memorandum of Encumbrance shall be wholly discharged by the **COUNCIL**.

AND PROVIDED ALWAYS that if and when the said or the registered proprietor for the time being of the land sells, transfers or transmits their interest in the land or any part thereof, then all liability of the said or the said registered proprietor thereof for the time being shall immediately cease and he/she or they shall be released as from the date of the said sale, transfer or transmission **TO THE INTENT** that the liability under this Memorandum of Encumbrance and Deed is only to run with the registered proprietor for the time being of the said land or part thereof.

AND SUBJECT AS AFORESAID the **COUNCIL** shall be entitled to all the powers and remedies given to Mortgagees and rentchargees by the Land Transfer Act 1952 and the Property Law Act 1952.

SCHEDULE B

EXAMPLE OF A DEED OF COVENANT

THIS DEED made the day of 20...

BETWEENof
(hereinafter together with his/her successors, assigns and personal representatives called "**the Owner**") of the first part

AND THE **COUNCIL** (hereinafter with its successors and assigns called "**the Council**") of the second part

WHEREAS

- A** The Owner is the registered proprietor of an estate in fee-simple in the land described in the schedule hereto ("**the land**") and
- B** A carport has been erected on part of the land and
- C** A stormwater sewer and a foul sewer of the Council runs through the land and partly under the area over which the carport has been erected
- D** The carport's position partly over the said sewers is a contravention of and constitutes a continuing breach of the Bylaws of the Council as the Owner does hereby admit and by reason thereof the Council would not ordinarily agree for the carport to remain in its present position but has nevertheless agreed for the carport to remain in consideration of the Owner entering into these premises in manner hereinafter appearing.

NOW THIS DEED WITNESSES that in consideration of the aforesaid premises the Owner hereby agrees with the Council as follows:

- 1 THE** carport covering the said sewers shall remain in its present position and shall not at any time be covered in. The Owner shall not make any alterations or modifications to the said carport except pursuant to this Deed or in accordance with a permit issued by the Council.
- 2 EXCEPT** in the case of an emergency (as determined in the sole and absolute discretion of the Council), any work carried out by the Council pursuant to this Deed will be carried out during the normal working hours of employees of the Council.
- 3 THE** granting of the permission by the Council for the said carport to remain in its position is on the strict condition that all the agreements and provisions hereof on the part of the Owner shall be complied with faithfully in all respects and is without prejudice (in the event of any default by the Owner hereunder) to the right of the Council to exercise all or any of the rights, powers and remedies whether civil or criminal conferred upon the Council by the Council's Bylaws or by statute or otherwise.
- 4 THE** Owner hereby agrees to indemnify the Council from and against all costs (including costs as between Solicitor and client), damages and expenses, claims, actions and proceedings of or against the Council in consequence of or arising out of any breach by the Owner of the agreements and provisions hereof and/or the exercise by the Council of any rights, powers and remedies available under this Deed.

- 5 **IN** addition to clause 4 hereof the Owner accepts that the Council will not be liable for any damage to the said carport arising directly or indirectly from a partial or total collapse of either or both the sewers, and will be responsible for the removal of the carport or parts thereof in the event of any such damage as requested by the Council.

- 6 **ALL** costs (including costs as between solicitor and client) of and incidental to this Deed (including the preparation thereof) and the Memorandum of Encumbrance aforesaid (including the preparation and registration thereof against the Title of the land) shall be borne by the Owner and shall be paid prior to and as a condition of the Council's granting of the permit aforesaid.

- 7 **IT** is hereby acknowledged and declared by the Council that if and when the said..... or the registered proprietor for the time being sell, transfer or transmit their interest in the land or any part thereof, then all liability of the said or the said registered proprietor thereof for the time being shall immediately cease and he/she or they shall be released as from the date of the said sale, transfer or transmission **TO THE INTENT** that the liability under this Deed of Covenant and Memorandum of Encumbrance made in pursuance thereof is only to run with the Owner for the time being of the said land or part thereof.

IN WITNESS WHEREOF these presents have been executed the day and year first before written.

SIGNED BY)

in the presence of)

THE COMMON SEAL of)

THE COUNCIL)

was hereto affixed in the presence of)