

DRAINAGE CONSTRUCTION SCHEMES POLICY

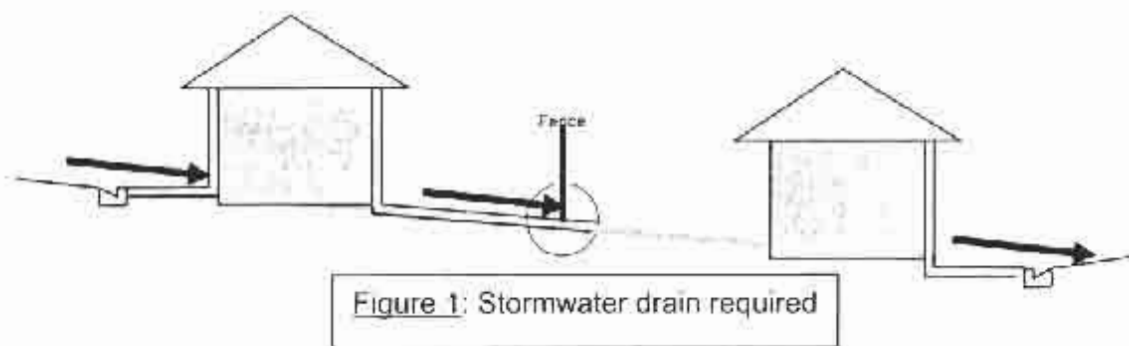
EXPLANATORY DOCUMENT

1. WHO IS AFFECTED BY THE DRAINAGE CONSTRUCTION SCHEMES POLICY?

Council adopted the Drainage Construction Schemes Policy in November 2001. Following some extensive work undertaken by Council, this policy has been redrafted (refer Section 2 "Background" below).

The Drainage Construction Schemes Policy is aimed at funding the construction of stormwater drains where they are required to provide a proper point of connection for properties and/or where it is of a poor standard (when compared with the standard in newer areas of the municipality).

It will mainly apply to areas where properties fall to the rear and where there is no Council underground drain at the rear of the properties to collect stormwater.



The policy proposes that

- The owners of the properties most affected by the proposed construction of a stormwater drain will fund the whole or part of the construction and
- Council will recover the costs by imposing a Special Rate, a Special Charge or a combination of both in accordance with Section 163 of the Local Government Act, 1989.

The people most likely to be affected by a drainage scheme proposal will include: -

- the owners of properties where water from the property discharges to the stormwater drain and
- The owners of the properties on the "down hill" side of the proposed drain.

The Victorian Civil and Administrative Tribunal (VCAT) is required by the Local Government Act 1989 to consider any appeals related to these types of schemes. VCAT recognises that there are two beneficiaries where Council installs stormwater drains between properties to control flows i.e. the owner of property on the high side (discharging) and the owner of property on the low side (protected).

2. SOME BACKGROUND

Normally, house drains from properties are connected to an underground drain maintained by the Council or to the kerb at the front of the property.

In new areas, such as Cairnlea, Brimbank Gardens, The Avenue Estate etc. the developer is required to provide all services to the area including the provision of stormwater drains and roads. The purchase price of the land reflects the cost of providing these services.

However, in many older areas of the municipality, some of the formal drainage and therefore the points of drainage discharge do not exist.

The reason for this is because many areas of the municipality were developed before legislation required the subdivider of the land to provide roads, sewers and stormwater drains.

Many of the roads and some drainage were constructed by Private Street and Drainage schemes i.e. in accordance with the Local Government Act 1958.

Often, houses existed prior to the formal construction of the roads.

It was common practice for councils to not construct stormwater drains at the rear of the properties. Presumably, this was either to reduce the overall construction costs of the necessary infrastructure, or to allow for the sewers to be constructed first (because they are usually deeper than the stormwater drains).

Where the stormwater drains did not exist, the owners had to use whatever alternatives were available to them in order to drain houses, other buildings, paving etc. This has sometimes resulted in undesirable and/or illegal and inefficient outcomes.

3. DRAINAGE PROBLEMS AND THE OWNER'S LEGAL REQUIREMENTS

There are three main types of drainage problems that are usually investigated by Council officers:-

1. Where an owner of a property is experiencing stormwater runoff from a neighbouring property,
2. Where water ponds on a property and it is not draining away,
3. Where an owner wishes to build a house or develop their property and where there is no point provided to which their stormwater can easily drain.

Legally,

- An owner of a property on the low side has the right to seek compensation if there is flow from other land, that flow is not reasonable and the flow of water causes injury, damage or economic loss (refer to Attachment 1)
- A person who interferes with a reasonable flow of water onto any land and the water causes injury, damage or economic loss the person who interferes with the flow is liable to pay damages. This would include the situation where a person installs a barrier to deflect stormwater and this water enters the land of a third person (refer to Attachment 1)
- Every new building that is constructed in Victoria is required to be connected to a point of drainage discharge nominated by the local Council (refer to Attachment 2).

Another problem that may occur is illegal connections to the sewer probably due to it being the only "pipe" at the rear of a property.

Legislation requires Council to investigate some drainage complaints.

Council may use legislation in an attempt to rectify certain situations and depending on the circumstances, this may lead to the following action:-

- The complainant is advised that it is a private matter to be dealt with between the property owners;
- The owner causing the problem may be required to carry out works after notification by Council. For example, Council may use the provisions of section 200 of the Local Government Act 1989. This requires Council to notify the owner and the owner then has appeal rights to the Victorian Civil and Administrative Tribunal.

- If an illegal stormwater connection to the sewer is suspected, a referral can be made to City West Water for the authority to investigate. If an illegal connection is discovered, City West Water will require the owner to immediately disconnect.

There are situations where the ability of a property owner to redirect stormwater cannot reasonably be undertaken due to the lack of formal drainage in the area.

4. BRIMBANK'S DRAINAGE CONSTRUCTION SCHEMES POLICY

It was reported to Council in November 2001 that: -

- There were a number of areas within the municipality where various problems were occurring because of the lack of easement drainage that is maintained by a drainage authority.
- The City of Kew had implemented drainage schemes under the provisions of the Local Government Act 1958 and 1989 and the City of Sunshine had implemented Private Street Schemes that included the construction of underground drainage.
- These problems will continue to increase and to become a priority as properties in these areas are redeveloped and also in areas where the existing infrastructure ages.
- A means by which Council may fund the construction of such drainage is by the imposition of a special rate or special charge (or combination of both) on persons receiving "special benefit" from the construction of the drainage.

Council adopted the Drainage Construction Schemes Policy and resolved that Council consider the implementation of two (2) drainage schemes in the vicinity of Parsons Street, Sunshine and upon settlement of the two (2) schemes, Council reassess the Policy together with the implementation process.

5. PARSONS STREET, SUNSHINE - DRAINAGE SCHEMES

At its meeting of the 27 May 2003, Council resolved to propose to impose Special Charges in the Parson Street areas. Council then:-

- Provided public notice of its intention to impose Special Charges to fund the construction of easement drainage;
- Wrote to all affected landowners;
- Conduct an Information Session;
- Received written submissions which were then analysed and further investigated;
- Heard presentations from the affected property owners or their representatives at Council's General Purpose Advisory meeting on the 27 August 2003.

Council subsequently abandoned the statutory process with a view that they may be reinitiated following consideration of the changes proposed by the Democratic Reform Bill (refer to 6 "Democratic Reform Bill" below) and a review of the policy including the consultation process.

6. DEMOCRATIC REFORM BILL

The State Government through the Local Government (Democratic Reform) Bill has now made a number of changes to the Local Government Act 1989 including changing some of the requirements related to Special Rates and Charges.

The major changes are:-

Proportional Benefit Criteria

Essentially, Council, for any scheme proposal, must calculate that proportion of the works or services that provide a community benefit as well as a special benefit to the affected ratepayers. The Department of Victorian Communities has drafted some guidelines as to what considerations should be made. The guidelines will shortly be released by the Minister for Local Government.

Notifying Owners

The Local Government Act, 1989, required Council to provide public notice, in a newspaper circulating in the area, of its proposed scheme. The Act will now require Council to notify each ratepayer in writing of its proposal. This is something this Council has been doing as a courtesy since it started implementing Special Charge schemes.

Objections

Where Council intends to recover more than two-thirds of the total cost of a project or works from affected ratepayers and if a majority object within 28 days of the public notice the Council may not declare the special rate or charge. The exception to this is "drainage schemes required for public health purposes".

Council in undertaking the statutory process for imposing any Special Rate or Special Charge will be legally required to meet the new requirements.

7. HOW DOES THE REDRAFTED POLICY DIFFER FROM THE ORIGINAL?

The redrafted policy considers four main factors not previously addressed by the original policy. These are: -

A. Existing buildings connected to a point of discharge previously nominated by Council

Council recognises that in many instances the owners of properties have previously gained formal advice from Council about the location of their point of discharge for a building on the site.

The policy now proposes a reduction of the contribution required by the owners of properties that will discharge stormwater to a proposed drain, based on the roof area of any building that is properly connected to a point of discharge (refer to the definition in the Policy document).

It is proposed that Council will then contribute towards the scheme an amount equal to the discounted sum.

Refer to the example below: -

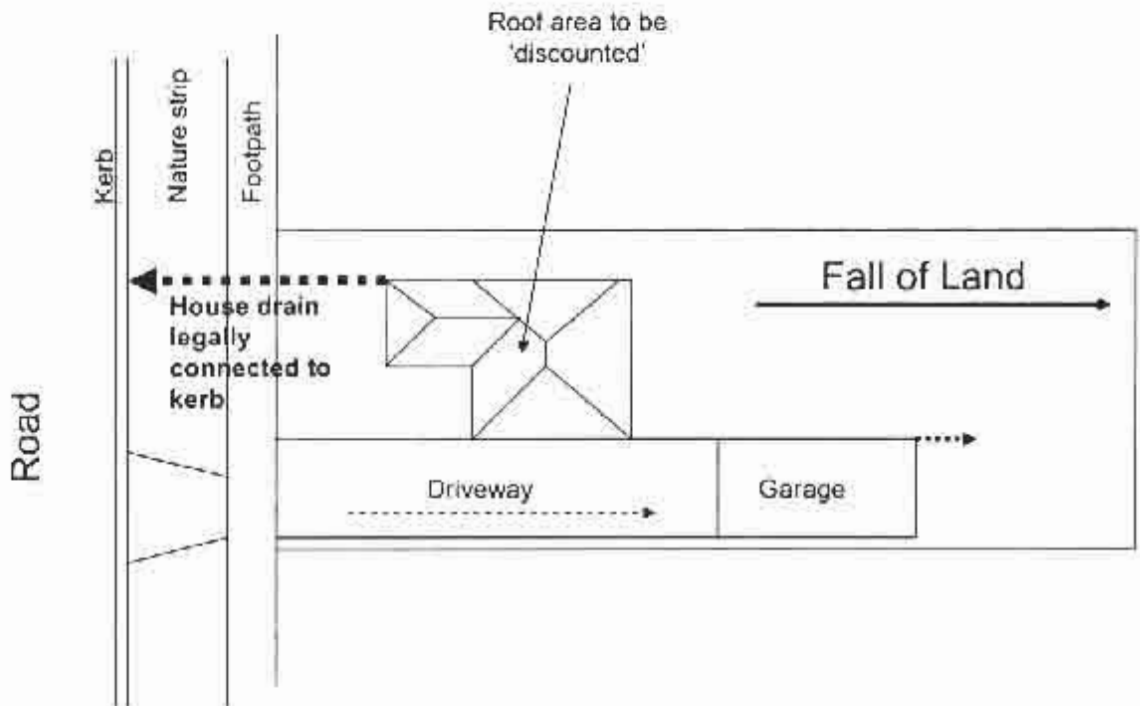


Figure 2: Example – Where 'discount' may be applied

B. Over time, the owners have “developed” their properties making it more costly to construct the necessary drainage on some properties

It is clear that the cost of constructing drainage now, particularly at the rear of established properties, would be more expensive than if it was done when the land was originally subdivided.

Generally, over time, owners have made improvements to their properties, such as, constructing paving and out buildings and providing landscaping. It could be expected that the older the area, the more improvements that have been made and therefore the more obstacles that need to be cleared and, if necessary reinstated, from the path of the proposed drainage.

Council is now suggesting that the cost of removal and reinstatements be shared between the landowners affected by the scheme and Council on a 50/50 basis.

However, where illegal buildings have been constructed in the path of the proposed drainage it is considered fair that the owner of the property should have full responsibility to remove the structure.

In addition, in order to construct some buildings on their properties, particularly sheds and garages, some owners have entered into a legal agreement with Council to meet the additional cost of works should Council need to construct or maintain a drain. Council is requiring that these owners meet their legal obligations.

C. Capping the actual lump sum costs to be contributed by an affected property owner at 20%

In preparing any Special Charge scheme, Council officers will prepare an estimate of the costs in providing the necessary works and determine how the costs will be apportioned between Council (if appropriate) and between the individual landowners.

Council now proposes that the owners will pay no more than 20% above the amount quoted to them at the time that the scheme is declared by Council.

Any additional costs will then be borne by the Council.

D. Consultation with property owners regarding each drainage scheme in consideration of Brimbank’s Community Consultation Charter

The Local Government Act 1989 requires Council to undertake certain levels of consultation with people who are affected by a proposed Special Charge scheme (refer to 9 “What is the process for the imposition of a Special Rate or Special Charge” below).

It is proposed that in addition to the legislative requirements Council will consult with the people affected to a level defined as “Neighbourhood” by the Brimbank Community Consultation Charter.

Such consultation will include: -

- Conducting an Information Session prior to Council considering a proposal for a Drainage Construction Scheme
- Establish a consultation group (including ward councillor) or consult with an existing group

8. HOW WILL COUNCIL REQUIRE THE OWNERS TO CONTRIBUTE?

Council cannot just merely require an owner to contribute.

It is proposed that Council will fund, at least part of the works, by imposing a Special Rate or a Special Charge or combination of both on the abutting landowners in accordance with section 163 of the Local Government Act 1989.

Brimbank City Council (and the former Cities of Keilor and Sunshine) has in the past used similar rates or charges to fund other road and drains in the municipality. Prior to 1989, councils undertook Private Street schemes, Drainage schemes, Health Act drainage schemes, Half Cost footpath schemes and Separate schemes to fund similar infrastructure.

9. WHAT IS THE PROCESS FOR THE IMPOSITION OF A SPECIAL RATE OR SPECIAL CHARGE?

Before any consideration by Council, Council Officers will undertake investigations and consult with the affected residents. The consultation will normally include an Information Session with the owners and occupiers of the affected properties.

If Council decides to impose Special Rates or Special Charges to fund the necessary drainage, it must follow the requirements of the Local Government Act 1989.

Briefly, the steps are as below, however, where Council is required to gain majority support to a proposal the steps will be different (refer to 6 "Democratic Reform Bill" above):-

1. Council will resolve to publish its intention to declare a Special Rate or Special Charge.
 2. Council will provide public notice in a local paper and write to the parties affected by the proposal.
 3. Depending on the circumstances of the scheme, the affected parties and others then have 14 or 28 days in which to make a written submission to Council. At that time, the person making the written submission can ask to be heard by a special committee of Council in support of their submission.
 4. Council will then arrange a special committee of Council to hear verbal submissions. The committee is usually Council's General Purpose Advisory Committee which meets twice each month.
 5. Council officers will then analyse any written and verbal submissions and, if necessary, undertake further investigation. A resident's committee may be formed to assist Council officers in their investigations and to discuss alternatives.
 6. A further report will then be presented to Council providing further information.
 7. Council (depending on the requirements of the Local Government Act 1989) may then decide to
 - Declare the Special Rate or Special Charge as was originally proposed or with some amendment
 - Require further investigation or consultation
 - Abandon the proposal.
 8. If the proposal proceeds, Council will again write to the affected landowners advising that Council has declared the Special Rate or Special Charge and that the owners have 30 days to make a written submission to the Victorian Civil and Administrative Tribunal (VCAT).
 9. VCAT is an independent government body that has been established to consider appeals from affected persons on planning matters and Special Rates and Charges.
 10. VCAT will then arrange to conduct a hearing to decide whether the scheme should proceed or not.
- It will generally take about 18 months from the time that Council proposes a Special Rate or Special Charge to the time that VCAT makes a decision as to whether the scheme should proceed or not.

10. IF I AM AFFECTED, WHAT ARE THE COSTS?

The costs to each property owner will depend on

- What is required to be constructed,;
- The amount of difficulty in undertaking the works e.g. if there are obstacles along the proposed path of the drain;
- The size of the owner's property when compared with other properties affected by the proposal;
- Whether the buildings on the property have already been connected to a proper point of discharge nominated by Council;
- The direction of the slope of the land.

11. WHY DOESN'T COUNCIL PAY FOR THE FULL COST?

Rate revenue from all ratepayers is the main source of income for Council. The majority of those ratepayers have previously paid for the provision of stormwater drains either in the purchase price of their property or through other drainage schemes or Private Street schemes.

In the redrafted policy, Council is proposing to share some of the costs of the construction of stormwater drainage in established residential areas as a recognition that owners have lawfully connected building to a point of discharge nominated by Council and that the costs are greater now when compared with what it would have cost had the works been undertaken when the land was first subdivided.

Council will also contribute if there is some form of community benefit derived from the construction of the necessary drainage and if there is a property owned by Council affected by the proposed works.

12. WHY ISN'T IT COUNCIL'S RESPONSIBILITY?

Legislation requires Council to investigate some types of drainage problems. The method of resolution will depend on the circumstances.

Council may take action e.g. by requiring an owner to undertake works by a certain time, but it can only do so within the limits allowed by the legislation.

Council, in adopting the Drainage Construction Schemes Policy, is: -

- Requiring the owners of the affected properties to contribute towards the cost of constructing the 'main' stormwater drains to their properties which is the case for the majority of other properties within the municipality
- Reinforcing the legal requirement for owners to control water flows from their properties, at the same time providing them with a means to do so, where that means may not currently exist.

Once the stormwater drainage has been constructed to Council's standards, Council will then assume the responsibility for the ongoing maintenance and replacement of the drainage.

13. HOW BIG WILL THESE DRAINAGE SCHEMES BE?

If a drainage complaint is received Council officers will investigate the cause, and identify the extent of the problem (i.e. how many properties are or are likely to be affected) and how the problem might be resolved.

As indicated above, the ability for some problems to be resolved is limited because the availability of formal drainage in the area.

It may be advantageous to address the drainage issues of an area or many blocks at the one time.

14. IF MY PROPERTY IS AFFECTED BY A DRAINAGE CONSTRUCTION SCHEME, HOW WILL I BE REQUIRED TO PAY?

As indicated above, in order for Council to impose a Special Rate or a Special Charge the Council must first undertake the process required by the Local Government Act 1989.

If a scheme does proceed, the usual method of payment is by quarterly instalments over a 10 year period. That is 40 payments.

Normally, Council will take out a loan from a financial institution to initially fund the works. As with any other loan, the financial institution will require Interest to be paid on the loan.

With each scheme, Council may consider allowing owners to pay by lump sum i.e. to make a once only payment. However, this is likely to be the exception rather than the rule.

An owner will not be required to make any payments until physical works for the construction of the drain commence on site.

15. WHAT IF I CAN'T AFFORD TO PAY

Everyone's circumstances are different and therefore Council is not likely to specify how these will be dealt within the Drainage Construction Schemes Policy.

Any ratepayer who is or who anticipates having difficulties making payments can seek a review, based on their particular circumstances by contacting Council's Rates Department.

FOR FURTHER INFORMATION

If you require further information about the **Drainage Construction Schemes Policy**, please contact: -

Customer Services

Postal Address: P.O. Box 70 Sunshine, 3020

Phone: 9249 4000

Email: dscheme@brimbank.vic.gov.au

TTY: 9249 4999

Language Link

9209 0131	Arabic	عربي
9209 0132	Croatian	Hrvatski
9209 0133	Greek	Ελληνικά
9209 0134	Italian	Italiano
9209 0135	Macedonian	Македонски
9209 0136	Serbian	Српски
9209 0137	Spanish	Español
9209 0138	Turkish	Türkçe
9209 0139	Vietnamese	Việt Nam
9209 0140	All Other languages	
9209 0141	English	

WATER ACT 1989 – Section 16**LIABILITY ARISING OUT OF FLOW OF WATER ETC.**

- (1) If:-
- (a) there is a flow of water from the land of a person onto any other land; and
 - (b) that flow is not reasonable; and
 - (c) the water causes:-
 - (i) injury to any other person; or
 - (ii) damage to the property (whether real or personal) of any person; or
 - (iii) any other person to suffer economic loss:-

the person who caused the flow is liable to pay damages to that other person in respect of that injury, damage or loss.

- (2) If:-
- (a) a person interferes with a reasonable flow of water onto any land which is not reasonable; and
 - (b) as a result of that interference water causes:-
 - (i) injury to any other persons; or
 - (ii) damage to the property (whether real or personal) of any other person; or
 - (iii) any person to suffer economic loss:-

the person who interfered with the flow is liable to pay damages to that other person in respect of that injury, damage or loss.

- (3) If the person who caused, or interfered with, the flow (as the case requires):-
- (a) is the servant of another person and acted in the course of the servant's employment; or
 - (b) is the agent of another person and acted within the scope of the agent's authority:-

that other person is liable to pay damages in respect of the injury, damage or loss.

- (4) The existence of a liability under sub-section (3) does not extinguish the liability of the servant or agent under sub-section (1) or (2), as the case requires.

- (5) If the causing of, or the interference with, the flow (as the case requires) was given rise to by works constructed or any other act done or omitted to be done on any land at a time before the current occupier became the occupier of the land, the current occupier is liable to pay damages in respect in the injury, damage or loss if the current occupier has failed to take any steps reasonably available to prevent the causing of, or the interference with, the flow (as the case requires) being so given rise to.
- (6) The existence of a liability under sub-section (5) extinguishes the liability under sub-section (1) of the person who caused the flow or the liability under sub-section (2) of the person who interfered with the flow (as the case requires)

BUILDING REGULATIONS 1994 – Regulation 5.9

STORM WATER DRAINAGE

- (1) The design of every stormwater drainage system to the point of discharge on an allotment must be approved by the relevant building surveyor.

- (2) The report of the relevant Council indicating the location of the point of discharge from an allotment either within the allotment or at the allotment boundary must be obtained in relation to an application for a building permit for the carrying out of building work which includes a stormwater drainage system.