

Easements Policy

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1 Introduction

- 1.1 Waikato District Council's scope and scale has changed over the decades, driven by successive local government reorganisations and a steadily increasing population. From 1 July 2026, responsibility for the delivery of water and wastewater services transferred to the council-controlled organisation, IAWAI.
- 1.2 Engineering standards for public utility infrastructure and protection of this infrastructure has differed over time. Historically, easements were not considered necessary for Council infrastructure on private property, as powers under the Local Government Act 2002 and the Public Works Act 1981 provided rights for access, operation, maintenance and replacement.
- 1.3 Over time, it has become more common for property owners to contest Council's right to enter private property for the purposes of operating, repairing, maintaining, or renewing utility infrastructure. In the absence of an easement, owners are often unaware that the infrastructure or overland flow paths exist, increasing the risk of infrastructure damage and flood damage. With demand for increased intensification and infill development this problem is multiplying, and it is becoming more difficult to manage property owner's expectations on the use of land above for utility pipework and service corridors.
- 1.4 The challenges associated with having public infrastructure on private land led to Council adopting an easement policy to identify and protect Council infrastructure on private property through the subdivision process. Council is now party to a wide range of easements throughout the district, while terms vary many of these easements are for the provision of water and wastewater services.

2 Purpose

- 2.1 Infrastructure is essential for the effective and efficient delivery of Council utility services. Council has a duty of care to protect its infrastructure from damage and requires access to its networks for ongoing operation and maintenance. Without protection, risk of community harm, infrastructure, and property damage increases. Responsibility for delivery of water and wastewater services transferred to IAWAI, along with the transfer of the associated infrastructure. Responsibility for stormwater remains with Council.

2.2 The Purpose of this policy is to:

- a) set Council's easement requirements for stormwater infrastructure and overland flow paths on private property and reserves; and
- b) outline how IAWAI may use of easements granted to Council for the water and wastewater purposes.

3 Objectives

- 3.1 To provide a framework for protecting Council stormwater infrastructure and critical overland flow paths on private property.
- 3.2 To facilitate ongoing unimpeded legal access to the stormwater network for inspection, operation, maintenance, repair, extension, and renewal.
- 3.3 To improve property owner awareness of the existence of Council's network that may impose a constraint on development or use of private property.
- 3.4 To ensure that the benefits of existing easements for water and wastewater continue to be under IAWAI.

4 Policy statements

General

- 4.1 As a condition of subdivision consent, an easement in gross in favour of Council shall be required over all Council owned stormwater infrastructure and critical overland flow paths located on private property or reserves.
- 4.2 Easement instruments will be registered against the relevant Record of Title and reserve the right for Council to enter the burdened land on reasonable notice in writing, unless an extreme emergency requires immediate action, for the purpose of inspecting, operating, maintaining, repairing or renewing Council owned infrastructure and safeguarding overland flow paths.

Subdivision Approvals

- 4.3 All subdivisions must comply with the Regional Infrastructure Technical Specifications (RITS) and Council's Stormwater Design Guidelines. Both discourage stormwater infrastructure and engineered drainage paths on private property unless there is no other practicable alternative. Section 220(1)(f) of the Resource Management Act 1991 empowers Council to impose as a condition of subdivision consent, easements to be granted or reserved.

Proposed Infrastructure

- 4.4 Where any new stormwater infrastructure or overland flow path must cross private property or reserve, the developer must register an easement over the stormwater network (including the zone of influence) in favour of Council as a condition of subdivision consent. In some cases, an easement for right of way will be necessary to provide for access.

- 4.5 Lot sizes of new developments must make allowance for the constraints imposed by the required easement, for example ensuring that a permitted dwelling and living court can still be accommodated. Where pipelines and accompanying easements are located along a side boundary of a lot, consideration shall be given to increasing the width of the lot if necessary.
- 4.6 All costs, including legal and surveying costs associated with the creation of an easement, are to be borne by the applicant.

Existing Infrastructure

- 4.7 Where Council stormwater infrastructure or critical overland flow paths exist on private property to be subdivided, the developer will be required to create an easement over the infrastructure and its zone of influence and/or overland flow paths to avoid, remedy or mitigate an effect of the subdivision. In some cases, an easement for right of way will be necessary to provide access.
- 4.8 All costs, including legal and surveying costs associated with the creation of an easement, are to be borne by the applicant.

Easement creation as a condition of subdivision consent

- 4.9 Section 291 of the Property Law Act 2007 provides the authority for registration of easements in gross. Section 108 of the Land Transfer Act 2017 provides for the registration of an easement instrument or the creation of easements upon the deposit of a plan. Section 223 of the Resource Management Act requires the location of required easements to be shown on a survey plan and detailed in a memorandum of easements. Following survey plan approval and satisfaction of all consent conditions, a Section 224(c) certificate is issued. All required easements are registered against the relevant Records of Title when the survey plan is deposited.

Easement and Engineering Geometry

- 4.10 Easement dimensions will be determined based on the type of infrastructure, zone of influence and any overland flow path. Where located on a boundary, the easement must be wholly contained within a single property. Dimensions will be determined by Council's Stormwater Engineer.

Pipes

- 4.11 The minimum width of an easement for stormwater pipelines shall be 3 metres or the zone of influence (whichever is larger) and pipes shall be located centrally within the easement.
- 4.12 The minimum width of an easement accommodating more than one pipeline shall be 4 metres, or the zone of influence (whichever is larger) and the pipes shall have a minimum separation between the outside walls of the pipes of 1 metre.
- 4.13 Deep, large, or critical pipes may require wider easements. Council's Stormwater Engineer will determine final easement dimensions.

IAWAI

- 4.14 IAWAI - Flowing Waters Ltd was established in 2025 and assumed full responsibility for drinking water and wastewater services from 1 July 2026.
- 4.15 Council holds easements for water and wastewater services. From 1 July 2026, Council permits IAWAI to use these Easements, subject to their terms and applicable law. IAWAI is responsible for confirming its ability to rely on and exercise rights under each easement.
- 4.16 Council will not release, vary, or surrender these easements without IAWAI's prior written consent (not to be unreasonably withheld where the easement is not required for water or wastewater Services). IAWAI may request transfer of easements used solely for water services, Council will transfer them if appropriate and if Council no longer requires them for its own purposes.

Easement Restrictions

- 4.17 All building work close to or over Council infrastructure must follow Council's 'Building Over or Adjacent to Infrastructure' process (refer Council website). Building over connections, junctions or manholes is not permitted.
- 4.18 New buildings, structures, (including retaining walls), driveways and outdoor living areas must not be built over critical assets or pressure pipes. Obstructions which may impact or redirect flow within an overland flow path will not be permitted. Landowners will retain responsibility for maintaining and keeping clear all overland flow paths protected by easements.
- 4.19 Separate written approval of Council is required for any building work, structure, retaining wall, driveway, paved area or other development proposed on an area subject to an easement in favour of Council. No structural loads shall be placed on or transferred to a pipeline or other infrastructure protected by easement and any structure shall be designed and founded so it will not be adversely affected by public infrastructure and associated trench line or future excavation requirement.
- 4.20 Altering the surface of the land subject to an easement in favour of Council requires the prior written consent from the relevant Council department e.g. Council's stormwater engineer, or IAWAI in the case of water or wastewater easements. This includes any earthworks resulting in a variation to the depth, importation of soil or material or the excavation of soil or material to the easement area.
- 4.21 Council and IAWAI will use due care in undertaking maintenance, inspection or construction works within an easement area but will not be responsible for any damage to non-permitted building works, permanent or non-permanent, which have been carried out on or over an easement in gross.

5 Related Documents and Legislation

- Regional Infrastructure Technical Specifications (RITS)
- Property Law Act 2007

- Land Transfer Act 2017 and Land Transfer Regulations 2018
- Resource Management Act 1991
- Local Government (Water Services) Act 2025
- Public Works Act 1981

6 Policy review

This policy shall be reviewed at three yearly intervals or as otherwise required by the Chief Executive or Strategic Property Manager.