



Appendix 1

Legal

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APPENDIX 1 LEGAL

INTRODUCTION

This appendix sets out Council's expectations for a number of legal matters, such as liability, indemnity and insurance, delegations, vesting, ownership and location of services. These are general requirements, and should be read in conjunction with the asset-specific requirements of each chapter.

1.1 Liability

The following sets out matters of liability and responsibility for any works involving an asset that is vested in or is to be vested in Council ownership.

- Council takes no responsibility for inaccurate information or unknown infrastructure found on site.
- Council will not be liable for any damages or loss whatsoever suffered from the use of information held by Council.
- All contractors/consultants must undertake other (such that there is a duty) field investigations that are necessary for surveyors/designers/owners etc to investigate fully/pothole to verify designs and correct positions of services etc.
- The consent holders, their employees, contractors and agents are responsible for physically locating the position of pipes and other utilities and infrastructure before commencing works.

1.2 Indemnity

All Designers or DPA's must have current professional indemnity insurance for an amount not less than:

Project	Professional Indemnity
In-fill development, not more than six lots or dwellings, no services vested to Council	\$300,000
In-fill development, not more than six lots or dwellings, and/or some services vested to Council	\$1,000,000
Green field development, more than six lots or dwellings where roads are vested to Council or services of \$500,000 or greater vested to Council	\$2,000,000

Any contractor/operator undertaking excavation and reinstatement works within any Council property will hold public liability insurance for an amount not less than five million dollars (\$5,000,000) for any claim or series of claims arising out of the same occurrence.

Compliance with any instruction of Council, or any person acting on its behalf, in performing what is considered to be necessary actions in terms of these standards will not absolve the contractor from any legal liability that he would otherwise have had in regard to claims for damage or failure of work for the client.

The Council will not be held liable for a loss of income due to construction works or loss of services while Council's contractors or agents work on programmed works.

1.3 Excavation and Reinstatement works within legal road

The contractor/operator will be held responsible for any street maintenance work required as a result of the excavation and reinstatement operations until twenty-four (24) months after notification to the Council that the final surfacing material has been applied.

Any such maintenance work required by Council will be undertaken by the operator at the operator's cost within five (5) working days of being notified by the Council to undertake repair works. If on the grounds of safety there is a need for more immediate action this remedial work will be completed within forty-eight (48) hours or such other time as may be directed by the Council. Should this not be complied with, Council reserves the right to arrange or undertake such maintenance work and this work will be at the cost of the operator.

See Chapter 8, Earthworks, Trenching and Reinstatement for further details.

For infrastructure, the Developer will retain responsibility for addressing defects arising from poor workmanship or faulty materials during a required maintenance period of at least 24 months following completion of works.

1.4 Performance Bonds

The Developer will provide a performance bond for unknown construction or design defects in cash or from a bondsman such as a registered bank (as defined in section 2 of the Reserve Bank of New Zealand Act 1989) or insurance company or other approved company, and meet the following conditions:

- The bond will apply to all subdivision or development construction works involving three or more additional lots or three new residential sites or where roads or services are to be vested in the Council.
- The bond for defects will be for the sum of \$1,500 per lot or residential site from a minimum of \$5,000 to a maximum of \$30,000 per stage, plus a bond administration fee of \$150. For significant infrastructure items that are to vest with council, an additional bond amount will be required. This amount will be set by Council's Engineering Manager.
- The term of the performance bond for defects liability will be for a minimum period of twenty-four (24) months from the satisfactory completion of the works (for contracts), or the issue of a 224 certificate as required under the RMA. Note: a maximum term of five (5) years may be imposed for low impact stormwater designs.
- The performance bond for defects will cover maintenance attributable to defects and the remedy of all defects arising from defective workmanship or materials.
- This will cover the services and roading construction works that are to be vested in the Council and other civil and structural engineering construction works to serve the subdivision or development and including electrical supply and telecommunication cable systems.
- The Developer/consent holder will be liable for the remedy of all asset defects arising before the end of the period of maintenance, together with Council costs in administering the bond. The developer will not be liable for damage by third parties.
- In the event that such a defect arises the Developer will be advised and, provided that the remedial work is not classified as urgent, given the opportunity to address the defect. Where urgent work is required to maintain service or where work on a 'live' system is required it will be carried out by Council's contractor at the Developer's cost.

- The performance bond for defects will not be required to cover general earthworks but will be required to cover any earthworks considered by Council to be part of the civil engineering construction.

1.5 Delegations

The Council has the authority to enforce the provisions of the Land Development Manual and may delegate such authority to any officer of Council or its nominated consultant.

1.6 Location of Services

This section deals with the location of services, and ownership responsibilities associated with all and any part of the service on privately-owned land, or privately-owned services on Council-owned land.

1.7 Services on Public Land

All reticulation will be located in accordance with the following general requirements:

- The preferred location of services to be vested in Council is on Council-owned land;
- All services will be aligned in accordance with the requirements of each section of this document.
- All services will be easily accessible for maintenance and repair works, so as to minimise disruption.
- Diagonal crossing of other services, including kerb lines and boundaries or fence lines, at acute angles less than 45 degrees will be avoided wherever possible.
- A minimum of 200mm vertical separation distance to all other underground services is required.
- Specific approval from the Engineering Manager will be required for any private services to be located within public land. Approval will be subject to a 'licence-to-occupy'.

1.8 Services on Private Land

The preferred location of services is on public land. However, this cannot be achieved in all circumstances, due to the location of existing infrastructure networks, land ownership and the topography of the landscape.

The following matters guide the placement of services on private land:

Where services are to be located on private land, consideration will be given to:

- Preserving access to the pipelines for maintenance purposes;
- Preserving the route for relaying services in the future; and
- Avoiding likely positions for buildings, garages, carports and retaining walls.

The preferred alignments of piped reticulation on private property will be:

- Within rights-of-way (ROWS) or driveways;
- Outside probable building envelopes;
- Clear of fence lines and kerb lines;
- Clear of large trees or heavily vegetated areas;
- Adjacent to boundaries;

- Parallel to boundaries; and
- On the northern side of lots.

Where a public or private service is located on private land access for repairs and maintenance will be maintained, and the following conditions met:

- An easement will be required in favour of the Council, where as part of a subdivision or development proposal, public drains less than or equal to 300mm diameter will be located in private property. The minimum width of easement will be 3.0m (Note: minimum 2.0 for rural water supply systems over farm land) with the pipe placed central within the easement. For public drains greater than 300mm diameter the minimum width of easement will be 3.0m plus the pipe diameter (i.e. 1.5m either side of the pipe).
- The standard wording required on engineering plans in the “notes” section, will be: “Memorandum of Easement in Gross will be provided in favour of Council to convey stormwater and/or wastewater in a pipe and to provide unrestricted access along the line of the pipe for maintenance and renewal work and to protect secondary flow paths”.
- Similar easements may be required over private common drains in favour of the lots served.
- Pipelines deeper than 2.5m will require easement widths greater than 3.0m plus pipe diameter to allow for wider than normal trench widths needed to access the pipe in the future.
- Where any construction work is required on another property, the owner’s consent will be endorsed on the original drawing in opaque black ink (not biro) that will permit satisfactory scanning reproduction.