

Water Act Claims and Property Disputes Involving Local Councils:

- Current Trends**
 - Top Tips to Avoid Disaster**
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23 November 2023

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1. Common complaints against Councils arising under the *Water Act*

2. Common property disputes involving Councils

3. Some **Top Tips** so you don't have to call me

“Unreasonable Flow of Water”

- Section 16: A person causing an unreasonable flow of water onto any other land which causes injury, loss or damage is liable for that loss.
- Councils don't supply water do they?
- Most of the recent claims involve:
 - Deficient stormwater pipes.
 - Unsealed roads.
 - Permit approval of landowner works which are subsequently alleged to have resulted in unreasonable flow.
 - Private landowner works paving unsealed driveways or other areas causing increased flow onto roadways.
- Why are we seeing more of these types of claims?
 - Increasingly intense development in existing urban areas (residential, commercial, industrial) and in previously less developed areas = more paving of previously unsealed/permeable surfaces + overland flows disrupted = more surface water is created and has to go somewhere. Water ends up flowing in places it hasn't previously.
 - Climactic conditions, whether seasonal events such as “el nino” or broader historical shifts attributed to climate change = more rainfall overall, and/or more intense instances of rainfall.
 - Aging stormwater infrastructure maintained by Councils with limited inspection and maintenance budgets.
 - Councils omitting to take some or all of the above factors into account when granting permits.
 - Councils unaware of some of these issues.
 - The “Perfect Storm” case study.

“Unreasonable Flow of Water”

Stories from the Front Line: “*You don’t know what you don’t know*”



Photo: 0_16082021_144657_E_6_10A.JPG

4.6m, Obstruction, an object is wedged in the joint, at joint, reduction in cross sectional area: 5-20% , from 5 to 8 o'clock

“Unreasonable Flow of Water”



Photo: 0_16082021_121808_E_4_4A.JPG
9.7m, Obstruction, an object is intruding through the wall ,
reduction in cross sectional area: 5-20%, STEEL REBAR, at 12
o'clock



Photo: 0_16082021_121754_E_4_4A.JPG
9.7m, Obstruction, an object is intruding through the wall ,
reduction in cross sectional area: 5-20%, STEEL REBAR, at 12
o'clock

Current Trends in Property Disputes

Section 173 (covenant) disputes: Alleged misrepresentation about agreement

“Joint Ventures”: Where Council “partners” with Occupier: Infrastructure, fit out. Shared costs? *Always*. Shared liability for defects / damages claims? *Nope* (it’s always Council’s fault...). Refunds when business falters

Planning: Alleged misrepresentation about permits

Leases, Licences: No or no proper written agreements

Construction: New builds, renewals, renovations: Water ingress, mould, defects

Water Act Disputes:

- Increase awareness of overland flow patterns.
- Appreciate the necessity to consider water flow when granting planning permits. Consider requiring the subject property to take responsibility for devising adequate alternatives if existing overland flows are likely to be disrupted.
- Understand the consequences of potential disruption to existing overland flows, and/or the creation of new overland flows, when planning to undertake major or minor civil works, whether roads or structures.
- When auditing the condition of existing stormwater infrastructure, consider whether the correct parameters have been given to the contractors.
- Red flag repeat instances of blockages and investigate more thoroughly. Don't just keep clearing.
- Insurance policy obligations?

Property Disputes:

- **When speaking with landowners/ratepayers:**
 - Do not make commitments Council cannot, or may not be able to, fulfil. Council cannot fetter the proper exercise of a statutory power.
 - Be very clear that Council cannot offer planning advice “off the cuff” for any specific query and can only make general comments which are not binding.
 - Be very clear that Council cannot enter into any binding agreement until all the facts are known and paperwork is received and Council personnel at all levels have had an opportunity to review the information.
 - File note the discussion (for internal records) and send the landowner an email summarising the substance of the discussion and where appropriate, include language to make clear that “no agreement” has yet been reached on the subject matter.
 - Once an agreement is achieved, ensure the details of the agreement are recorded in a written and signed document.
- Do not offer to help solve tenant/sub-tenant disputes (not involving Council) just because the dispute arises on Council-owned land. Council is not in the business of mediation.
- Consider auditing all existing occupation of Council-owned land across the municipality and, where documentation is inadequate or non-existent, take steps to regularise that now before a dispute emerges. Happy parties will sign a sensible document; angry parties will not.

Disclaimer

The information contained in these presentations is intended as general commentary and should not be regarded as legal advice.

Should you require specific advice on the topics or areas discussed please contact the presenter directly.

Questions and Contacts



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