

27. WATER SUPPLY PIPES INSTALLED IN PRIVATE LAND

Officer responsible M Stockwell City Water & Waste Manager	Author Bruce Henderson, Planning & Projects Manager, DDI 371 13234
Corporate Plan Output: Water Services	

The purpose of this report is to set out and discuss the various issues regarding the ownership of water supply pipe work installed in privately owned land and who is, or should be maintaining them, and then to establish a series of policy statements that are both legally and practically workable.

BACKGROUND

Pipes are installed on private property with varying purposes, intents and official status. These include:

1. Pipe installed in private land to service only that property which has only one premise / occupier.
2. Pipe installed in private land to service only that property which has multiple premises / occupiers (some of these have a body corporate established to administer common responsibilities, but many do not).
3. Pipe installed through one property to service another property, but not the property through which the pipe passes. Easements may or may not exist in favour of end users.
4. Pipe installed in private land, or Right of Way (ROW), to service that property plus other properties as well. Pipe protected by easements in favour of all customers who have water connections from the pipe, or the Christchurch City Council.
5. Pipe installed in private land (or ROW) to service that property plus other properties as well. Pipe protected by easements in favour of only some of the Customers who have water connections from the pipe. This situation can arise when additional connections have been installed (presumably by Council) as a result of subsequent subdivision or for convenience sake.
6. Pipe installed in private land (or ROW) to service that property plus other properties as well. Pipe not protected by any easements (Christchurch City Council or private).
7. A pipe is installed in private land (or ROW), principally for Water Supply networking purposes (with or without easements in favour of Christchurch City Council)

EXISTING POLICY ETC

Prior to 1989 the five territorial Authorities that amalgamated into this Council had varying policies in respect to these pipes. Some maintained all pipework up to where only a single property was served from it, and others considered all pipework in private land to be privately owned, and thus the maintenance to be the responsibility of the private owners.

The situation becomes more complex when it is realised that a number of long Row's, in order to provide fire fighting cover, have 100mm or larger pipes with Fire Hydrants installed on them. Most plumbers are not equipped to repair these pipes and legislation (strongly) suggests that this fire fighting capacity must remain under the direct control and maintenance of the Watersupply Authority.

A series of policy statements and legal opinions in the early to mid 1990's have given some basis on which to manage the maintenance of this pipework. They are:

- Council Resolution of 22/4/91. Council declined to maintain services to private right of ways. This policy was formulated in respect to the actual ROWs but has been interpreted to include the services installed within the ROW.
- Water Supply Units policy statement of 24/5/91 issued essentially stating that all pipe in private land (including Row's) is considered private pipe and maintenance at pipe owners arrangements and costs. Exceptions, although not stated in the policy statement, no doubt were intended for pipes within easements in favour of Christchurch City Council.
- The 1994 opinion of the Legal Services Manager that pipes within private property, for private use, are not Council owned but are privately owned.

- The Legal Services Manager, at the same time as giving the above opinion stated that, if necessary, and providing the private pipe owners gave their permission, that the Council could undertake repairs to these pipes with out the Council accepting ownership of them.
- The Local Government Act (Sec 676) allows Council to enter private property and undertake emergency repairs on private pipe work if the owners have not effected the repair themselves. Set procedures need to be followed, and after the work has been undertaken, the Council recovers some or all of these costs depending on the circumstances.

One of the reasons that service authorities have been reluctant to undertake maintenance work on pipework on private land has been the issue of restoration afterwards. There are many examples of disputes when work has occurred under cobblestone, stamped concrete and hotmix driveways and footpaths. It has not been uncommon in the past, to have demands for a complete driveway to be resurfaced, or replaced, after quite a small pipe repair.

On the other hand it can become a very onerous and expensive task for one private landowner to do the responsible thing and arrange for a pipe repair and then seek reimbursement from other users (joint owners, sometimes absentee landlords) of a pipe.

Furthermore if the Council becomes involved and inadvertently, or deliberately, repairs a private pipe once or twice, then the expectation quickly shifts to that of Council continuing to maintain the pipe, and renew it if required.

WATER METERS

When discussing this topic the associated topic of the installation of water meters on pipes (particularly in the cross lease situation) not owned by the Council often arises. It is frequently thought that the decision not to install individual meters to each premise on a cross leased property was because it was not legally possible. However when Council made the decision to universally meter all connections the Legal Services Manager gave the opinion that Council could install meters on private pipes and, thus cross leased properties in principal could have been fitted with individual meters. However several complications resulted in this not occurring. These included:

- Having to repetitively discuss and resolve the issue with private property owners as to the Councils right to install meters on private pipework, especially when charging for water was thought to be imminent.
- Practical problems of installing meters in readable locations. Eg many semi-detached older style properties have the water supply pipework installed in the roof space and running from unit to unit through this space.
- The added costs and disputes when to having to break up and restore paving etc on private property.
- The proportioning of water bills for water used in common/shared areas (watering grass berms, washing down driveways, car washing etc).

THE PRESENT SITUATION

Because of all the above issues, in recent years, and in order to (hopefully) gain a workable arrangement, the following rules have been applied. These rules use the basic assumption that pipework on private land is privately owned and is to be maintained by the private users of the pipe, with exceptions.

1. All pipes within a single property title, and serving only that property shall be maintained by the property owner/s at their expense and effort.
2. That any pipe installed within an easement, and utilised only by those parties, named in the easement documents, will be maintained by the named parties at their expense and effort.
3. That all pipes protected by an easement in favour of the CCC are owned and maintained by the Council.

4. A pipe is installed in private land (or ROW), principally for Watersupply networking purposes (with or without an easement in favour of the Council) will be maintained by the Council. For the purposes of this discussion, a pipe for “networking purposes”, is defined as one used for conveying water through and beyond its immediate locality, and is not there to only supply the customers with connections from it.
5. That all pipes installed in private land (or ROW) fitted with Fire Hydrants for the benefit of more than one landowner are assumed to be owned and maintained by the Council up to the last hydrant..
6. That pipework installed in a ROW and used by the owners of the ROW shall be maintained by the users of the pipe.
7. That where a pipe is installed in private land that is not a ROW and legal difficulties arise in respect to the use and maintenance of the installed pipework, the Council will attempt to facilitate a satisfactory outcome. If this involves the installation of new pipework, the Council will contribute 50% of the cost of the pipework on private land, and 100% of the “on street” cost.

DISCUSSION

These rules have worked reasonably well and resulted in most situations being resolved.

From the Councils point of view, the main difficulty with the application of these rules is in respect to “7” above. It arises on the hills where the physical nature of the land, and the differing supply pressure zones can combine to make a solution hard to achieve. Negotiating with a relatively large number of people can be very time consuming and sometimes impossible. Achieving a satisfactory outcome for all parties can be extremely time consuming. . The final solution often involves Officers sensibly and sometimes liberally interpreting the financial rule (7. above) in order to obtain a result. There is probably little that can be done to ease these situations other than perhaps the Council accepting a greater share of the cost in order to rectify the situation for once and for all.

From the community’s point of view, apart from the situation just discussed, the principal problem area is where “private pipes” have a large number of users. When four or fewer properties use a ROW, a long standing practice of each having its own separate supply pipe installed from the road boundary up to the individual property usually negates the issue. However with larger numbers of users an individual responsible resident / owner who takes the initiative to arrange for a pipe repair can experience a lot of difficulty getting all the other users to pay their share. The larger the number of users, often the harder the task. There is also a common belief / argument that the Council owns the pipe up to the watermeter.

A solution is to continue the application of the rules (or similar) presently being used, with the recovery of costs modified, and if the users of such a pipe fail to undertake maintenance use the provisions of section 676 of the Local Government Act. This allows the Council to undertake emergency repairs within a specified time frame and recover the costs. The Council could avoid the issue of full restoration (it could be stated on the notice issued to owners prior to work commencing that no restoration other than patch asphalt would be used). This action would generally be a means of avoiding undue water wastage from leaking pipes and the possible resulting damage to property.

It is difficult to establish the exact number of pipes / ROWs involved but the estimate is that there are approximately 150 pipes that could sometimes be subject to the recommendations of this report.

Many water supply authorities in New Zealand are experiencing similar problems in this area and most are taking a similar approach.

SUMMARY

In the main the rules presently being applied generally appear to be a satisfactory for dealing with the maintenance of water supply on private property. The possible exception to this is where a large number of properties utilise a common pipe. Using the provisions of section 676 of the Local Government Act to undertake maintenance may be a solution to the problems that commonly arise in this situation. A sample letter that could be used in these circumstances is attached. Accordingly it is proposed that the Council confirm/update its policy concerning water supply pipes in private land in line with the recommendations below.

OFFICER'S RECOMMENDATIONS:

That Council adopt the following rules in respect to the maintenance of watersupply pipes installed in private property.

- (a) All pipes within a single property title, and serving only that property shall be maintained by the property owner/s at their expense and effort.
- (b) That any pipe installed within an easement, and utilised only by those parties, named in the easement documents, is owned by and will be maintained by the named parties at their expense and effort.
- (c) That all pipes protected by an easement in favour of the Christchurch City Council are owned and will be maintained by the Council.
- (d) A pipe which is owned by the Council and which is installed in private land (or ROW), principally for Watersupply networking purposes (with or without an easement in favour of the Council) will be maintained by the Council.
- (e) That all pipes installed in private land (or ROW) fitted with Fire Hydrants for the benefit of more than one landowner are considered to be owned and, therefore, maintained by the Council up to and including the hydrants.
- (f) That pipework installed in a ROW and used by the owners of the ROW shall be maintained by the users of the pipe.
- (g) That where a pipe is installed in private land and legal difficulties arise in respect to the use and maintenance of the installed pipework, the Council will attempt to facilitate a satisfactory outcome. In assisting with the determination of an outcome, an assessment will be made of the public and private benefit accruing from any proposed work and costs will be proportionally allocated between the Council
- (h) The Council will maintain and service water connection boxes whether installed on private property or public land.
- (i) That where the owners of a private pipe do not maintain the pipe Section 676 of the Local Government Act will be used to have the pipe repair arranged by the Council, but the Council will not undertake full restoration of the surface, and will take steps to recover the cost of repair.

Recommendation: That recommendations (a)–(i) as listed above be adopted.

Chairman's

Recommendation: That the above recommendation be adopted.