

## STORMWATER DISCHARGE

Each wet season, Cairns Regional Council receives an increasing number of allegations that stormwater run-off from adjoining properties is causing nuisance to private land. This information sheet outlines the Council's role, property owner's responsibilities and Council's jurisdiction.

### Our responsibilities



Any alterations to an existing stormwater installation that has resulted in an impact to neighbouring allotments is a matter that can be investigated by Council. Based on the site history, Council can enforce stormwater alterations if a condition of a Development Approval requires the building or development to be connected to a lawful point of discharge.

Under the *Local Government Act 2009*, Council can notify a property owner about potential stormwater nuisance impacting adjoining lots where there are no development conditions relating to stormwater disposal and a person alters the existing stormwater discharge or fails to maintain stormwater installations. Any further action may need to be pursued via civil avenues.

### Overland flow



Overland surface water flowing between private properties usually occurs when the natural contours of the land are sloping. Surface water flows to the lowest point. An upstream property owner cannot be held liable merely because surface water flows naturally from his / her land onto the lower land of a neighbour. It is the responsibility of a downstream property owner to manage and protect the lawfully constructed buildings on their property. This can be achieved by installing private inter allotment drainage which is then connected to the kerb and channel at the front of the property or to another legal point of discharge such as a drainage easement.

In circumstances where fences, walls, swimming pools, landscaping, garden beds, buildings, structures and the like have been erected and are interfering with the path of overland flow, Council does not have any legislative ability to become involved. The matter is necessarily civil between the parties themselves, where clear remedies under the ordinary civil law of nuisance are available. Council has no powers to become involved in such circumstances.

### Building Development Approvals



Private Building Certifiers are responsible for ensuring that an applicant complies with the conditions of the Development Approval.

Where a Building Certifier has issued a Development Approval for building work that includes stormwater infrastructure, any concerns should be referred to that Certifier. Council can enforce conditions of a Development Approval only once all building work has been finalised. In some instances, the ground level adjacent to a building or structure would be deemed the 'lawful point of discharge' for storm water.

### Stormwater installations for older developments

There is no power available under any Act for local government to require a landowner to carry out new building work or alter building work in relation to an existing building. Where a drainage problem is failure to provide adequate installations such as gutters and downpipes on existing buildings and structures, Council has no regulatory or enforcement power to require the landowner to provide such installations; affected parties need to pursue civil remedies through the magistrate's court.

### Dispute resolution



Neighbours are encouraged to seek mutually suitable drainage solutions through discussion with each other. Failing this, Queensland Civil and

Administrative Tribunal is the relevant dispute resolution authority - [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)

### Customer requests

If you cannot resolve your drainage issues with your neighbour and believe Council has jurisdiction, you can contact Cairns Regional Council on:

- Calling 1300 69 22 47
- Using our [Report a Problem online form](#)
- Report a Problem feature on the [My Cairns](#) app.

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