

Appendix 12
Powers and responsibilities in relation to creeks

Powers and responsibilities for Brown Hill Creek (also applicable to other watercourses)

	Landowner	NRM Board ⁽¹⁾	Council ⁽²⁾
(A) Maintenance of the 'natural' creek	Landowner responsibility under Section 131 of NRM Act	<p>Could legally exercise power under Section 131⁽³⁾</p> <ul style="list-style-type: none"> - Direct the landowner to take specified action to maintain the watercourse in 'good condition' - If non-compliance, the NRM Board can carry out the work itself and charge the landowner as a debt <p>Or, use Section 31 [see (D)]</p> <p>Power also exists under Section 32</p> <ul style="list-style-type: none"> - Entry for the purposes of investigation, survey or carrying out work in an emergency 	<p>SMA can direct a council (but not a regional subsidiary) to carry out any works (within the scope of creek conditions and impacts such as flooding) under Section 16 (There does not have to be a SMP)</p> <p>A council may take action:-</p> <ul style="list-style-type: none"> (i) consistent with a SMP, or (ii) required by an order under Section 16 including entry of the land and undertaking any form of work (Section 21) <p>Subject to entry conditions (Section 22)</p>
(B) Maintenance of permanent infrastructure constructed by an Authority	Landowner may, by consent, be responsible under an agreement with the relevant Authority (Section 31 of the NRM Act or Section 21 of Schedule 1A)	As for maintenance of the natural creek	<ul style="list-style-type: none"> (a) If easement is acquired (either by agreement or by compulsion), it follows that the council or Authority (eg regional subsidiary) would probably assume responsibility (b) Under agreement with the council or Authority, the landowner may consent to be responsible <p>(Section 21)</p>
(C) Maintenance of privately constructed infrastructure	As for maintenance of the natural creek	As for maintenance of the natural creek Also, power to remove infrastructure under Section 31	As for maintenance of the natural creek

	Landowner	NRM Board ⁽¹⁾	Council ⁽²⁾
(D) Construction of permanent infrastructure Includes (under NRM Act) - embankments - walls - channels - other works - earthworks Meaning covered in Section 21 of Schedule 1A ⁽⁴⁾	Landowner requires 'water affecting activities permit' under the NRM Act (Section 127)	By the NRMB under Section 31 - Undertake any form of work including for purposes of stormwater management and flood mitigation - Subject to easement or landowner consent to undertake necessary care, control and management of the works – if permanent infrastructure - Acquisition of land by agreement is also an option	By a council under Section 21 - Subject to there being a SMP - Subject to easement or landowner consent to undertake necessary care, control and management of the works Section 21 provides that a council (whether under a SMP or as ordered by the SMA under Section 16) may undertake any activity of a 'prescribed' kind

(1) Governed by NRM Act

(2) Governed by Schedule 1A of the LG Act

(3) In case (A) the NRM Board has been reluctant to use the Section 131 power widely – on the basis that objects of the NRM Act are aimed principally at natural resources management and ecological sustainability

(4) A SMP should serve as the primary indicator of whether there is to be 'permanent' infrastructure (Kelly, 2008) *[although, excavation (eg to widen or deepen a watercourse) may not be permanent infrastructure]*

In the context of the above summary:

- 'responsibility' means ensuring performance (eg if outsourced) and being accountable for performance. Performance implies provision of financial resources in order to achieve a specified or 'good condition' standard.
- 'Landowner' is a private person or entity as distinct from a public authority, but provisions may be equally applicable to a public authority.
- 'Easement' includes "other appropriate interest"
- Acquisition of an easement or land must be carried out in accordance with the Land Acquisition Act and any other applicable laws