

COMBINED ALLOTMENT STATEMENTS POLICY

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File No.	HCC11/294
Strategic Objective	4.2 - Create community pride through a well-designed and maintained City.
Adopted by Council	November 2011
Re-Adopted	23 August 2021
Date for Review	August 2026
Responsible Officer	Manager Planning and Development
Department	Planning and Development

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1 POLICY STATEMENT

- 1.1 The Municipal Building Surveyor (MBS) will administer and decide applications for Regulation 64 combined allotment statements in accordance with the relevant provisions of the Act and the Regulations, and in doing so, will consider this policy and any other relevant Council policies.

2 PURPOSE

- 2.1 The aims of this policy are to provide guidance to Council's Building Surveyor staff when administering, considering and deciding requests for Municipal Building Surveyor (MBS) Combined Allotment Statement determinations under the Building Regulations. These considerations include:
- 2.1.1 The amenity of buildings and the built environment;
 - 2.1.2 Risk to the safety or health of the public or building occupants;
 - 2.1.3 Risk of spread of fire to or from buildings;
 - 2.1.4 Form and content of submissions;
 - 2.1.5 Requirements for Section 173 Agreements;
 - 2.1.6 That future purchasers, mortgagees and lessees are aware of therequirements and conditions of statements;
 - 2.1.7 Principles for considering the revocation of combined allotmentstatements.

3 SCOPE

- 3.1 The Building Regulations give powers to the MBS as well as private building surveyors to make determinations, by way of written statement, that two or more contiguous allotments or an allotment and adjoining land can be treated as one allotment for the purposes of the Regulations. The Regulations provide as follows:

Combined Allotments

- 3.1.1 The Municipal Building Surveyor may by statement in writing determine that two or more contiguous allotments or an allotment and adjoining land can be treated as one allotment for the purposes of these regulations;
- 3.1.2 In deciding whether to issue a statement under sub-regulation (1) the municipal building surveyor must take into account:
- 3.1.2.1 The structural adequacy of any building to which the statement applies;
 - 3.1.2.2 The requirements necessary to make reasonable provision for:
 - a) the amenity of any building and the safety and health of people using any building to which the statement applies; and
 - b) avoiding the spread of fire to or from any adjoining building.
 - 3.1.2.3 Land to which a statement under sub-regulation (1) applies is deemed

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to be an allotment for the purposes of these regulations;

3.1.2.4 The Municipal Building Surveyor may revoke a statement under sub-regulation (1) if there is a change of circumstances that would significantly affect any of the matters referred to in sub-regulation (2);

3.1.2.5 A private building surveyor may exercise the powers of the Municipal Building Surveyor under sub-regulations (1), (2) and (4) in the case of building work for which the private building surveyor has been appointed to issue a building permit.

3.1.3 A variety of circumstances exist in which persons may seek a combined allotment determination. Such circumstances for example may include (but are not limited to) where the owner of two or more adjoining allotments wishes to construct a building which is partially within more than one of the allotments; where two separate owners may wish to join a building for a joint commercial enterprise; where an owner may wish to site a building on an allotment but is unable to do so due to the operation of the siting requirements of the regulations;

3.1.4 Issues arise however in ensuring that subsequent purchasers and lessees are aware of the determination and that it could be revoked. Issues also arise in respect of whether Council is required to monitor buildings that are subject to a determination to ensure that the buildings still do not pose a danger to amenity, health or safety or a risk of fire spread;

3.1.5 In circumstances where Regulation 64 statements are revoked by the MBS, or if circumstances arise necessitating the revocation of a statement, alterations of any affected buildings will be necessary to prevent:

3.1.5.1 detriment being caused to the amenity of buildings; or

3.1.5.2 risk to the safety or health of the public or persons occupying buildings;
or

3.1.5.3 risk of spread of fire to or from buildings on the combined allotments or adjoining allotments.

4 OBJECTIVE

4.1 The objective of this policy is that applications for combined allotment statements and decisions in relation to the revocation or variation of combined allotment statements will be assessed in a consistent and equitable manner to the overall benefit of the Council and the Hume Community.

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5 POLICY IMPLEMENTATION

- 5.1 The MBS will only consider making a determination under Regulation 64 when a specific application for a determination has been received.
- 5.2 The application must be in writing and include:
- 5.2.1 written consent to the proposal from all relevant allotment and land owners;
 - 5.2.2 a written submission in support of the proposal addressing each of the requirements of Regulation 64(2)(a) and (b) which includes such professional expert reports as may be necessary in the circumstances; and
 - 5.2.3 written consent from all relevant property and land owners to the entering of an agreement with Council pursuant to Section 173 of the Planning and Environment Act 1987.
- 5.3 All applications received shall be referred to Council's Statutory Planning department and any other Council department that may be relevant having regard to the application for comment and advice.
- 5.4 Comments and advice from Council's Statutory Planning department and any other relevant department shall be returned to the MBS within 5 business days of the application referral date.
- 5.5 In deciding an application seeking the combining of allotments under Regulation 64, the MBS will consider any comments and advice provided by Council departments.
- 5.6 If the MBS is of the view that insufficient information has been provided pursuant to paragraph 5.2.2 above, the application may be refused or further information and or expert reports may be requested.
- 5.7 In order to ensure that:
- 5.7.1 all future owners and future lessees are aware of the determination;
 - 5.7.2 should it be necessary to revoke any determination, there are obligations upon relevant owners to carry out works to remove any potential danger to amenity, health or safety or a risk of fire spread; and
 - 5.7.3 The owner(s) of all affected allotments and land will be required to enter an agreement with Council under Section 173 of the Planning & Environment Act 1987 ('the Agreement').
- 5.8 The terms of the Agreement shall include but not be limited to:
- 5.8.1 A release for Council from all actions, suits and claims from owners and their heirs and assigns;
 - 5.8.2 An indemnity by the owners to the benefit of Council in respect of any actions, suits or claims brought by others;

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- 5.8.3 A requirement that the owner(s) advise any lessees (present and future) of the determination and provide them with a copy of the Agreement;
- 5.8.4 A requirement that works necessary to be carried out to remove any potential danger to amenity, health and safety or a risk of fire spread be carried out within 30 days of there being a change in specified circumstances;
- 5.8.5 A clause requiring the owner to notify the MBS of any change in specified circumstances;
- 5.8.6 A clause specifying the circumstances giving rise to the requirement referred to in paragraphs 5.8.4 and 5.8.5;
- 5.8.7 A clause specifying the circumstances, but without limiting them, as to when a determination may be revoked;
- 5.8.8 A clause giving Council the right to carry out any required works under paragraph 5.8.3 upon the owners failure to do so within the prescribed time period and that the owners shall pay the cost of Council in carrying out that work;
- 5.8.9 A clause requiring the owner to reimburse Council's reasonable costs amending or cancelling the Agreement; and in revoking the statement; and
- 5.8.10 Any other matter as the MBS sees fit in the circumstances.
- 5.9 Revocation of a statement shall:
- 5.9.1 Be made of the basis that:
- 5.9.1.1 circumstances have changed since the making of a statement; and
- 5.9.1.2 detriment is being caused to the amenity of buildings; or
- 5.9.1.3 there is risk to the safety or health of the public or persons occupying buildings; or
- 5.9.1.4 risk of spread of fire to or from buildings on the combined allotments or adjoining allotments.
- 5.9.2 Be in writing to the relevant property owners;
- 5.9.3 State the reasons for the revocation of the statement; and
- 5.9.4 Require the amendment or cancellation of Section 173 Agreements.

6 DEFINITIONS AND ABBREVIATIONS

- 6.1 **Act** – means the Building Act 1993.
- 6.2 **Allotment** – has the same meaning as that described in Regulation 5 of the Regulations.

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- 6.3 **Building Regulations** – means the Building Regulations made pursuant to Section 7 of the Building Act 1993 in force at the time of the application.
- 6.4 **Council** – means Hume City Council.
- 6.5 **Municipal Building Surveyor (MBS)** – means the Municipal Building Surveyor of Hume City Council appointed in accordance with and for the purposes of the Building Act 1993.
- 6.6 **Private Building Surveyor** – has the same meaning as that described in section 3 of the Act.

7 RELATED DOCUMENTS

- 7.1 Building Act 1993.
- 7.2 Building Regulations 2018.

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