

# CONSTRUCT BUILDINGS OVER EASEMENT POLICY

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<b>Policy Reference No.</b>	POL/156
<b>File No.</b>	HCC11/294
<b>Strategic Objective</b>	4.1 - Facilitate appropriate urban development while protecting and enhancing the City's environment, natural heritage and rural places.
<b>Adopted by Council</b>	November 2011
<b>Re-Adopted</b>	23 August 2021
<b>Date for Review</b>	August 2026
<b>Responsible Officer</b>	Manager Planning and Development
<b>Department</b>	Planning and Development

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## 1 POLICY STATEMENT

- 1.1 Applications for Council consent to construct buildings or carry out building work over easements will be administered and decided in compliance with the provisions of the Act, the Building Regulations and this policy in a consistent and equitable manner to the overall benefit of Council and the Hume Community.

## 2 PURPOSE

- 2.1 The aim of this policy is to provide guidance to Council's staff when administering, considering and deciding applications for Council consent under the building regulations to construct buildings over easements, including:
- 2.1.1 Form and content of applications.
  - 2.1.2 Procedural matters and referrals processes.
  - 2.1.3 Conditions of consent.
  - 2.1.4 Requirements for section 173 agreements.
  - 2.1.5 Owner's responsibilities.
  - 2.1.6 Principles for refusal of consent.

## 3 SCOPE

- 3.1 The policy applies to all applications for report and consent under the Building Regulations to carry out building work or to construct a building over an easement vested in Council as a Service Authority.

## 4 OBJECTIVE

- 4.1 Applications for Council consent to carry out building work or to construct a building over an easement will be assessed in a consistent, equitable and efficient manner to the overall benefit of Council and the Hume community.

## 5 POLICY IMPLEMENTATION

- 5.1 The owner of an allotment who plans to carry out building work or construct a building over an easement must provide the following information and documentation to Council:
- 5.1.1 An application form completed either by the owner of the land or a person who has consent from the owner to act as the agent of the owner;
  - 5.1.2 Written advice from the owner of the land agreeing to enter into a section 173 agreement if Council consent is to be granted (subject to below);
  - 5.1.3 One set of site plans for the proposed building work – minimum scale 1:500;
  - 5.1.4 One set of architectural design drawings of the proposed building work (fully dimensioned) – minimum scale 1:100;
  - 5.1.5 One set of structural designs relevant to proposed building work;

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- 5.1.6 Once current copy of the certificate of title for the land including the plan of subdivision (or title allotment plan), and any relevant covenants, agreements or instruments registered on the title;
- 5.1.7 One copy of any other relevant Service Authority consents to construct over an easement relevant to the proposal.
- 5.2 The Delegated Officer in considering an application shall consult with and have regard to:
- 5.1.8 Council's Assets (Engineers) department advice;
- 5.1.9 Any report and consent issued by other authorities in which the easement is vested.
- 5.2 Council's consent will generally only be granted where:
- 5.2.1 the building work or building (including footings) will not interfere with or cause damage or detriment to any Council asset (e.g. drain, pit etc);
- 5.2.2 the building or building work (including footings) does not encroach over or within 500mm of any drain, asset or stormwater connection point within an easement;
- 5.2.3 the footings for any buildings or building work, or part, incorporate an engineer designed pier and beam footings system, the minimum founding depth of which must be not less than 200mm below the invert level of any Council drainage pipe or asset within the easement;
- 5.2.4 a permit is obtained from Council before any drains or drainage assets may be opened, altered or interfered with;
- 5.2.5 The owner of the allotment enters into an agreement with Council pursuant to section 173 of the Planning and Environment Act 1987 which shall include the following conditions:
- 5.2.5.1 To permit the Council to enter into and upon the land, building or other structure and/or the easement for the purpose of inspecting maintaining or repairing any drain or other works of the Council now laid or which may be hereafter laid by the Council and of constructing any sewer or drain or other works of the Council which may be hereafter laid by the Council;
- 5.2.5.2 That the allotment owners will be solely responsible for all injury, loss or damage which may be occasioned to the said building work, building or other structure by reason of or incidental to the carrying out of an inspection, construction, maintenance or repair of a drain or other works or by reason of or incidental to the presence of a drain or other asset;
- 5.2.5.3 That the allotment owners will indemnify the Council against all action claims suits and demands arising out of or incidental to the erection, construction and/or retention of a building, building work or other structure over a drain or other asset and/or easement;

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- 5.2.5.4 That the allotment owners will pay to the Council any additional costs incurred by it in inspecting constructing, maintaining or repairing a drain or other works by reason of a building, building work or other structure having been erected over such drain or other asset and/or easement;
- 5.2.5.5 That the allotment owners will not sell or mortgage land to which this agreement refers without first disclosing the contents of the Agreement to the purchaser or mortgagee;
- 5.2.5.6 That the allotment owners will ensure that the foundations of the building, building work or other structure shall be clear of any drain or other works already in the easement;
- 5.2.5.7 That the floor of the building will be designed and constructed in a manner which ensures that a drain or other works will be readily accessible for repair or maintenance;
- 5.2.5.8 That the allotment owners will pay to the Council its reasonable costs and expenses of and incidental to the preparation execution and subsequent registration, amendment or cancellation of a memorandum of the Section 173 Agreement;
- 5.2.5.9 That the Council and the allotment owners will acknowledge and agree that the obligations imposed upon the owners take effect as covenants which shall be annexed to and run at law and in equity with the said land and by the owners, the owner's successors, assignees and transferees, the registered proprietor or proprietors for the time being of the said land and every part thereof;
- 5.2.5.10 That the Council has the authority to modify the terms and conditions of a Section 173 agreement.
- 5.3 Council may exempt an owner of an allotment from the requirement to enter into a Section 173 agreement where in the opinion of the delegated officer a proposal would be inconsequential to Council's interests in an easement.
- 5.4 An application may be refused by Council for one of the following reasons:
- 5.4.1 Proposal considered detrimental to a Council drain or asset;
- 5.4.2 Proposal not in the overall interests of Council or the Hume community;
- 5.4.3 Construction does not comply with the provisions of the Act, the Regulations or the Building Code of Australia.
- 5.5 Where Council refuses an application, the applicant will be advised of their right to appeal the decision of Council to the Building Appeals Board, and that the period within which an appeal can be lodged is 30 days from that decision.
- 5.6 The policy will be maintained, implemented and reviewed by the Municipal building Surveyor.
- 5.7 The policy will be accessible to the community at the following locations:

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- 5.7.1 Council's internet site;
- 5.7.2 Customer Service Centres;
- 5.7.3 On request from Building Control Services.
- 5.8 This policy will be communicated to key internal stakeholders, such as Council's Assets (Engineers) Department.
- 5.9 The policy will be reviewed every four years, or whenever the Act or the Building Regulations are amended. This will include an analysis of cost, customer feedback and issues arising from use of the policy.

## 6 DEFINITIONS AND ABBREVIATIONS

- 6.1 **Act** – means the Building Act 1993.
- 6.2 **Allotment** – the parcel of land to which an application for consent and report relates.
- 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 **Delegated Officer** – means an officer to whom Council's power to consent to the construction of a building over an easement has been delegated.
- 6.6 **Easement** – a legal right over the whole or part of land that is delineated and registered on the title for that land which is vested in the Council or other authority for drainage or other purposes.
- 6.7 **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.
- 6.8 **Road** – same meaning as it has in the Local Government Act 1989.
- 6.9 **Section 173 agreement** – an agreement made pursuant to section 173 of the Planning and Environment Act 1987.
- 6.10 **Assets (Engineers) Department** – means the department of the Council responsible for the design, construction and approval of stormwater drainage infrastructure, connection, maintenance and repairs.

## 7 RELATED DOCUMENTS

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

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