



# Easements Management Policy

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## 1. PURPOSE

The purpose of this Policy is to:

1. State Council's position in regards to managing Easements.
2. Assist in establishing conditions of approval when an application to build over an Easement is sought.
3. Ensure access is available for future maintenance of Council's assets.
4. State Council's position in regards to Easement negotiation and settlement.

## 2. POLICY

This policy will address various Easement considerations and provides guidance to the management of Easements vested in Council.

### 2.1. Creation of Easements

An Easement is an interest in land. Specifically, an Easement is a contract between parties to give a person (including a company, individual, Council or other entity) (the grantee) the right to use another's land (the grantor) for a particular purpose.

Accordingly, the effect of an Easement is to partially restrict a landowner's use of the land, which is the subject of the Easement.

Easements will be generally created through the conveyancing process when a Land Division is proposed. The Land Division will usually identify Easements relating to the supply of water, sewer, electricity and Council's stormwater drainage infrastructure. A Short Form Easement has traditionally been used when a new Easement is required. This form of Easement cannot be altered from the purpose described within Schedule 6 of the *Real Property Act 1886*. In relation to drainage and sewerage infrastructure, Council's rights are limited to entering the said land to "break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, re-laying or examining".

Additional conditions cannot be imposed in relation to how land over which a Short Form Easement exists can be further developed. This means that Council may have limited powers in relation to access and the protection of infrastructure within the easement.

For the reasons outlined above, only a Long Form Easement is to be used for a new Easement vested in Council, and conditions will be attached to the creation of such an Easement placing limitations on:

1. The design and nature of buildings permitted to be constructed within the Easement
2. The alteration of ground levels within the Easement; and
3. Any other conditions as deemed appropriate by the Council delegate.

In addition, all easements created must adhere to the following criteria:

1. New easements created through the land division process will not receive compensation for the new easement on the affected land. All costs associated with the creation of this easement will be at the applicant's cost.
2. New easements for stormwater drainage purposes must be created with a minimum of one and a half metres (1.5 metres) lateral distance measured from the centreline of the infrastructure to the outer edge of the easement. Therefore, the minimum width of an easement shall be three metres (3 metres). The length of the easement must be the full length of the infrastructure with an additional 1.5 metre buffer.

An example of the minimum wording required to form part of the long form easement is shown below:

## **INTERPRETATION**

**Easement Area** is the area marked "X" on (INSERT PLAN REFERENCE)

### **1) GRANT**

*The Grantor grants to the Grantee a full, free and unrestricted right and liberty for the Grantee, his agents, servants and workmen, to at any time break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining drains or drainage pipes and of using and maintaining those drains and drainage pipes for drainage purposes and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.*

### **2) ALTERATIONS OR ADDITIONS TO EASEMENT AREA**

*The Grantor must not carry out any alterations, or make any additions, to the Easement Area without the consent of the Grantee.*

## 2.2. Applying to Encroach/Build Over an Easement – Consideration for Consent

If a property owner or applicant intends to carry out works over Council infrastructure or within an Easement, it is necessary to obtain Council approval. Most Council Easements are registered with the Lands Title Office and will be present on the Certificate of Title for the relevant land.

In general, Council will not approve the construction of any structure over or under an easement in favour of the City of Tea Tree Gully. Council may consider an encroachment if the applicant successfully demonstrates the following:

1. That the proposed encroachment is an essential part of the overall development.
2. That there is no other viable location for the proposed encroachment to be located.
3. That the proposed Easement encroachment poses no long-term maintenance or access issues for Council.
4. That the proposed encroachment does not pose a threat of damage to the Council infrastructure contained within the Easement.

## 2.3. Applying to Encroach/Build Over an Easement – Technical Information

If the property owner or development applicant is successfully able to demonstrate the criteria within *Applying to Encroach/Build Over an Easement – Consideration for Consent*, Council's technical engineering requirements must also be adhered to.

The following technical requirements are applicable:

1. Minimum 1.5 metres horizontal/lateral clearance must be maintained from the from the edge of Council infrastructure.
2. Maximum cover amount over Council infrastructure is to be maintained between 0.6 metres to 1.5 metres.
3. Ensure proposed structure does not inhibit Council access such that a minimum overhead clearance of 2.5 metres is required.
4. The proposed structure (footings/other loads) must ensure the zone of influence will be clear of the adjacent trench line for an existing or future access (engineer design drawings will be required).
5. The proposed structure must allow Council to excavate the full width of the easement without compromising any adjoining structure.
6. No structure encroachment will be acceptable over main access points for Council infrastructure such as manholes, junction boxes or inspection points – a minimum clearance of 1 metre is required from any adjacent structure.
7. Access pit lids must be maintained at surface level, any changes in levels as a result of the proposed encroachment will require the re-adjustment of access pit level.

Applicant/land owner shall be responsible for all costs associated with the re-adjustment of lid level.

8. No excavation of natural surface level is to occur that may compromise the integrity of the underlying infrastructure.
9. Vegetation planted within the easement must not damage or inhibit Council's ability to maintain Council infrastructure – large trees or vegetation with intrusive roots will not be acceptable.
10. Structures must be independently supported from any adjacent dwellings or permanent structure. Structures must not share a roof, foundation or any other permanent structure to allow for minimal impact if dismantling required.

A clear and well-presented Engineering Site Plan and Associated Details are critical documents for Council to successfully assess the suitability of an Easement encroachment.

Engineering plans including footing plans and a site plan (shown to scale) must be submitted to Council which:

1. Show the size of the proposed encroachment over the Easement (in square metres)
2. Clearly show the distance (in metres) between the structure/encroachment from relevant allotment and Easement boundaries.
3. Show the location, depth and size of all footings for a structure relative to the Easement and the infrastructure located within the Easement.
4. Show that the minimum opening height of proposed structures (in metres) does not restrict access for construction equipment onto the Easement.
5. Show any change (cut or fill) to the existing surface level of the Easement by:
  - 5.1 Providing existing surface levels which are obtained by a Licensed Surveyor
  - 5.2 Providing design surface levels which are determined by an Engineer
  - 5.3 Providing details of proposed surface finishes (any sealed hard standing areas must be block paved only)

For additional information relating to stormwater drainage encroachment, refer to the *Drainage Easement Encroachment Form*.

1. The location and alignment of infrastructure contained within Easements will vary and hence Council will assess each encroachment uniquely based upon infrastructure location.
2. Council reserves the right to refuse a proposed Easement encroachment if the impacts upon the Easement have not been adequately addressed.

There are two ways to apply to Council to build over a Council Easement:

1. Via a Development Application (where a structure/development proposed within or near an Easement requires development approval) or:
2. Via application to the relevant infrastructure department (where a Development Application is not required for the proposed structure/development).

## 2.4. Applying to Encroach/Build Over an Easement – Condition of Approval

Any approval of encroachment is subject to the following conditions:

1. Council maintains the right to refuse any easement encroachments at its discretion. Should any additional works be proposed which are not indicated on the approved plans, approval must be obtained from Council.
2. Council is to be indemnified against any damages to the structure as a result of any operation by Council in exercising its rights within the Easement.
3. Council shall not be responsible for the removal or reinstatement of any hard-standing area, structure or vegetation placed within the Easement.
4. The applicant/land owner will be responsible for any damages, repair or replacement to Council infrastructure as a result of the structure.
5. The applicant/land owner agrees to take out and keep current a public risk insurance policy for at least 20 million dollars to protect against potential risks associated with the construction and maintenance of the easement encroachment on the land.
6. The applicant/land owner will ensure that the proposed structure will be dismantled within 28 days if requested to do so by Council in order for Council to carry out works in the easement.
7. The applicant/land owner agrees to allow Council to dismantle all encroachments and commence work immediately in the event of an emergency.
8. The applicant/land owner will be responsible for all costs associated with altering Council infrastructure as a direct result of the proposed encroachment.

A Council officer acting under delegated authority is empowered to apply any additional conditions of approval considered necessary.

## 2.5. Types of Easement Encroachments

An Easement encroachment refers to a physical intrusion of any structure above or below any land that is subject to an Easement as per the Certificate of Title for that property.

The following are examples of common Easement encroachments where approval is and isn't required – this refers to easement encroachment approval only and not any other Council approvals required:

Examples of Easement encroachment where approval is not required:

- a. Minor Landscaping
- b. Relocatable play equipment

Examples of Easement encroachment where approval is required:

- a. Driveways - if proposed over an infrastructure access pit
- b. Carports
- c. Verandas and Pergolas

- d. Timber Decking
- e. Retaining walls
- f. Signage (with footings)
- g. Fixed on-ground structures
- h. Earthworks (cutting and filling)
- i. Fences
- j. Sheds
- k. Above ground rainwater tanks
- l. Any work within a watercourse

Examples of Easement encroachment that will not be approved by Council

- a. Dwellings
- b. Warehouses
- c. Garages
- d. Swimming Pools
- e. Spas
- f. Major Earthworks
- g. Large Sheds
- h. Any structure located over a main infrastructure access point such as a manhole or stormwater drainage pit

## 2.6. Extinguishing of Easements

Council will consider extinguishing an Easement, only if the Easement is not required for Council infrastructure now or in the future. An applicant will be responsible for all costs incurred for extinguishing an Easement.

## 2.7. Easement Negotiation and Settlement

Easements are often required for the installation and maintenance of Council stormwater infrastructure. Where an Easement is required over an existing allotment a property owner may be entitled to compensation.

The compensation paid for acquiring an Easement will be determined in accordance with industry standard calculations.

## 2.8. Easements over Council owned land

Council as a land owner can receive payment or compensation for granting an Easement over Council land. Statutory authorities and developers usually negotiate with Council prior to the Easement's creation with final approval granted by resolution of Council.

### 3. DEFINITIONS

For the purposes of this policy the following definitions apply:

#### CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

#### Easement

A right to use a portion of land for a specific purpose. An Easement generally provides for the provision of a service.

#### Land Division

- a. the division, subdivision or re-subdivision of the allotment (including by community plan under the Community Titles Act 1996 and by strata plan under the Strata Titles Act 1988); or
- b. the alteration of the boundaries of an allotment

#### Short Form Easement

Section 89A of the Real Property Act 1886 provides for a short form of description to be used on a plan and title. Where used, the short form wording incorporates the corresponding long form description of that Easement as set out in Schedule 6 of the Real Property Act.

#### Long Form Easement

Unlike a Short Form Easement, the specific description and conditions relating to this type of Easement are not described within the Real Property Act 1886. The description for a Long Form Easement and its conditions for this Easement are set out in full in the documentation creating the Easement and can be varied depending on the circumstance and the reasons for the Easement.

#### Service Easement

Under section 223LG of the Real Property Act 1886 a service Easement means an Easement in favour of:

- a. A water industry entity for sewerage or water supply purposes
- b. A council or the Crown for drainage purposes; or
- c. An electricity entity for electricity supply purposes, and includes an Easement pursuant to a corresponding previous enactment. Service Easements are generally created as a condition of a Land Division approval and can either be a Short Form or a Long Form Easement.

### 4. LEGISLATIVE FRAMEWORK

There is no legislative requirement for Council to have a policy relating to this area.

The following legislation applies to this Policy.

#### Local Government Act 1999

Section 201(2)(d) and (e) of this Act allows Council to grant an Easement over community land or a road owned by or vested in Council.

Section 191 (2) of this Act allows Council to compulsorily acquire land for a purpose classified by the regulations as an approved purpose and under the Land Acquisition Act 1969.

#### Real Property Act 1886

Part 8 of this Act relates to the creation and management of Easements over land.

Section 223LG of this Act relates to the creation of Service Easements and the rights of Easement holders for the purpose of installing and maintaining service infrastructure.

Schedule 6 of this Act provides an overview of the various types of short forms of Easements and their interpretation.

#### Water Industry Act 2012

Clause 24(2)(b) and 25 of Schedule 1A of this Act allows Council staff to acquire easements or other appropriate interest over land in accordance with Land Acquisition Act 1969

Part 6 Division 1 of this Act outlines the protection of CWMS under statutory easements

## 4.1. Other references

Council's document including:

- a. [Fees and Charges Register](#)
- b. Indemnity to encroach over Easement Form.

External document including:

- a. Land Services Group - [Easements & Rights of Way](#)

## 5. STRATEGIC PLAN/POLICY

### 5.1. Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
Community	
<i>Our services are accessible to all and respond to changing community needs</i>	<i>The improved protection of public infrastructure to ensure timely response to emergency works</i>



Environment	
<i>A community that is protected from public and environmental health risks</i>	<i>The structural protection of public infrastructure to</i>
<i>We are resilient to climate change and equipped to manage the impact of extreme weather events</i>	<i>Improve accessibility of public infrastructure to adopt to the impact of increase frequency of heavy rainfall and flooding</i>
Places	
<i>Infrastructure and community facilities are fit for purpose, constructed using sustainable practices and well maintained</i>	<i>Protection of the structural integrity of Council infrastructure whilst ensuring responsible development</i>
Leadership	
<i>Delivery of services is sustainable and adaptable</i>	<i>Minimising the future cost of maintenance and renewal on Council infrastructure through thorough protection of assets</i>
<i>Decision making is informed, based on evidence and is consistent</i>	<i>Implemented practices are based on industry standards and current maintenance hurdles</i>

## 5.2. Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The themes most relevant to this report are: People and Leadership; Customers and community relations; Governance; Finance and systems, Continuous improvement

## 6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

Record number	D23/48004
Responsible Manager	Manager Technical & Engineering Services
Other key internal stakeholders	General Manager City Operations
Last reviewed	30 August 2023
Adoption reference	Governance & Policy Committee
Resolution number	19
Previous review dates	28/8/20, 12/9/17, 10/6/14, 12/08/12 (Merging of two policies: Building Over Drainage/CWMS Easements Policy and Easement Negotiation and Settlement Policy)
Legal requirement	NA
Due date next review	2027
Delegations	Yes