

Structures and Fill Over Easements Policy	
Reference Number:	Section 4 No. 5
Responsible Department:	Strategy & Development
Related Policy/Procedure:	NIL
Date of Adoption:	15 September 2009
Current Review Date:	28 February 2023
Minute Reference:	OCM-2023/045
Version Number:	Amendment No. 2
Applicable Legislation:	Local Government Act, 1999 Development Act 1993 and associated Regulations (repealed) Planning, Development and Infrastructure Act, 2016 and associated Regulations Water Industry Act 2012
Next Review Date:	February 2025
Review Frequency:	Within 12 months of Council election (every 4 years)

0. Purpose

This policy provides guidance for Council when considering requests for structures or fill over easements where Council is the Service Authority.

1. General Principles

- 2.1 This Policy will come into effect from the date of the relevant Council resolution.
- 2.2 Council seeks to undertake its affairs in a way that contributes to open, transparent and informed decision-making.
- 2.3 Council seeks to ensure advice and decisions made are consistent whilst considering all aspects of the functions of council including repairs, maintenance, expenditure, risk management and liability.

2. General Information

- 3.1 An easement is registered on the Certificate of Title for the land. The Certificate of Title contains details of the location, dimensions and purpose for the easement.
- 3.2 Easements may contain infrastructure for a range of purposes. Where Council is the Service Authority, it is likely that the easement will relate to drainage and/ or sewer (e.g. Community Wastewater Management System) infrastructure.
- 3.3 The easement dimensions define that portion of land that gives a particular Service Authority the right to enter the property to service, maintain or replace the infrastructure within the easement area.

3. Definitions for the purposes of this Policy

4.1 'Easement' –

1. As registered on a Certificate of Title; or

2. The Water Industry Act 2012 (Part 6 Division 1 Section 49) offers a protection to water and sewerage infrastructure from 'encroachment' (whether or not it is registered on a Certificate of Title).

4.2 'Fill' - is any additional soil or soil like matter that has a depth of 200mm or more.

4.3 'Structure' - is any construction over the easement area, regardless of whether Development Approval is required, such as retaining walls (including rock walls), sheds, verandas, pergolas, swimming pools and the like.

4.4 'Service Authority' – Owner of infrastructure located within an easement.

4. Policy Requirements

5.1 Approval in writing from Council is required for any fill or structures placed over an easement where Council is the service authority.

5.2 An application to Council for placing fill and/or structures over an easement shall be in writing and include the following;

5.2.1 Site plan indicating all existing structures on site and the proposed fill or structures. The site plan is to include a north point, location of the street and dimensions and distances.

5.2.2 Details of the proposed structure, retaining wall or fill including height, depth, distance to boundaries and materials.

5.2.3 Copy of approval from another Service Authority where the easement is shared with that Authority.

5.2.4 Cross section through the easement showing the location of the existing services within the easement and the details of the proposed structure, retaining wall or fill including height, depth, distance to boundaries and materials.

5.3 No fill shall be placed over an easement such that the distance from the new surface level to the base of the pipe exceeds 1.5 metres in depth. (Refer to Diagram 1)

Approval is not necessary for fill less than 200mm in depth.

5.4 Generally, structures are not to be located over an easement except for retaining walls as described in Clause 5.5.

5.5 Retaining walls are not to be located over an easement unless the total height of the retaining wall does not exceed 200mm.

5.6 Placement of a structure over an easement will only otherwise be considered where it can be demonstrated that suitable access to Council's infrastructure will be retained for either maintenance or replacement, as may be determined by Council, acting reasonably and at its discretion.

5.7 Placement of a structure over an easement will not be permitted where the structure proposed may cause any pipework within the easement to be damaged.

- 5.8 Access to the easement area is to be provided at all times to the body responsible for the maintenance and repairs to the infrastructure located within the easement. Where that is Council, the owner or resident of the property will be provided with a minimum of 48 hours' notice where access is required for general maintenance.
- 5.9 Emergency access may be required by the Council. No notice to the owner or resident of the land will be provided in emergency situations.
- 6.0 Approval from another easement authority (where applicable) is to be provided to the Council when requesting to build or provide fill over an easement.
- 6.1 Any permission granted by Council will only relate to the infrastructure that Council is responsible for as the relevant Service Authority.

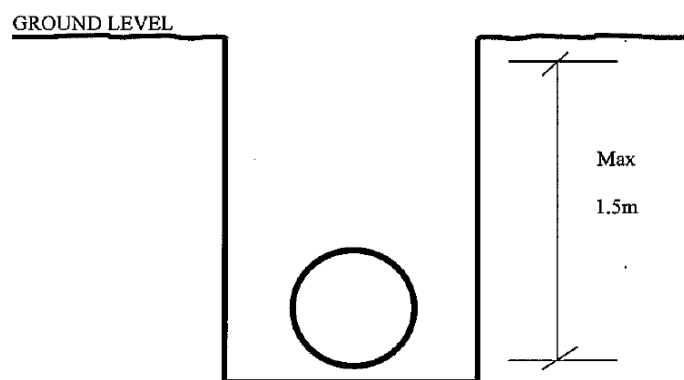
5. Decisions made by Light Regional Council

- 6.1 Requests for structures or fill over easements where Council is the Service Authority will be determined by the General Manager, Infrastructure and Environment (or their delegate) acting under delegation, or otherwise by Council.

1. Policy Review

- 5.1 This Policy shall be reviewed as required by Council or legislation.

Diagram 1 – Maximum depth of trench allowed with the addition of any fill.



Policy History

1. Policy adopted by Council on Tuesday, 15 September 2009, refer Council Minute 10.3.7, Page 2009/246.
2. Amendment No. 1 adopted by Council on Tuesday, 8 December 2020, Minute Reference Item 13.3.1 Page 2020/235
3. Amendment No. 2 adopted by Council on 28 February 2023 Minute Reference (OCM-2023/045) Page (15).