

Easement Policy

Policy Owner:	General Manager Service Delivery
Policy Sponsor:	Policy & Regulatory Committee
Approved By:	Waikato District Council
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Introduction

The Waikato District has grown through local government re-organisation which has involved the amalgamation of territorial authorities over a number of years. Previous authorities have applied various engineering standards for public utility infrastructure and the protection of this infrastructure. In the past easements were not considered necessary where Council assets were installed on private property as powers are granted by the Local Government Act 2002 and the Public Works Act 1981 to provide access for the operation, maintenance and replacement of those assets.

In some areas within the Waikato District it is not uncommon for utility pipework to be located beneath buildings. This is not considered good practice, if alternative arrangements are possible, because of the increased risk of damage to private property from any failure of the utility service, and increased maintenance and replacement costs. Furthermore, it has become more common for property owners to contest Council's right to enter private property for the purposes of operating, repairing, maintaining or renewing utility infrastructure. Sometimes owners are not aware that the infrastructure even exists. As further subdivision occurs and section sizes reduce, the problem will likely get worse.

The problems have identified a need to provide an improved legal mechanism to identify and protect Council owned assets located on private property now and into the future.

Purpose

Assets are essential for the effective and efficient delivery of Council utility services. Waikato District Council has a duty of care to protect its assets from damage, and requires access to them for ongoing operation and maintenance. The purpose of this policy is to clarify Council's approach to providing the required protection and access to Council assets located on private property and to ensure that owners are aware of the existence of infrastructure on their property.

Objectives

To provide a framework for the protection of Council assets located on private property.

To provide ongoing unimpeded legal access to Council assets for inspection, operation, maintenance, repair, extension and renewal.

To provide a clear indication to current and future property owners of the existence of Council owned assets located on their property that may impose a constraint to the development of the property and restrictions in use.

Relevant Documents/Legislation

Hamilton City Council Infrastructure Technical Specifications (ITS)

Policy Review

This policy will be reviewed as deemed appropriate by the General Manager Service Delivery, but not less than once every three years.

Policy Statements

I. General

In order to achieve the above policy objectives, an easement in gross in favour of Council should be created over all Council owned water supply pipes, sewerage pipes, storm water pipes as well as critical primary and secondary stormwater overland flow paths that are located within private property or Reserves.

The easement instrument will be registered against the property title and will reserve the right for Council to enter the easement at any time without notice for the purpose of inspecting, operating, maintaining, repairing or renewing Council owned infrastructure.

The legal instruments for all easements in gross are to be registered on the relevant Certificate of Title.

2. Subdivision Approvals

All subdivisions are required to comply with the Hamilton City Council Infrastructure Technical Specifications (ITS) which discourages water, wastewater or stormwater infrastructure and engineered drainage paths on private property unless there is no other practicable alternative.

Proposed Infrastructure

Where any new infrastructure is required to cross private property or reserves, the developer shall create an easement over any sewer, water and stormwater infrastructure (including critical overland flow paths) that is to be vested in Council and located within the private property or reserve, by the imposition of consent conditions as part of any subdivision approval. (In some cases a right of way easement will be necessary to provide access to an asset).

Existing Infrastructure

In certain circumstances Council infrastructure may already exist on private property. Subdivision of a site where there is any existing infrastructure or critical overland flow paths should require the developer to create an easement over the assets through the imposition of consent conditions when the protection of the infrastructure through an easement is shown to avoid remedy or mitigate an effect of the subdivision. (In some cases a right of way easement will be necessary to provide access to an asset).

Easements

S291 Property Law Act 2007 provides for the granting of easements in gross. Registration of the easement in gross against the affected Certificate of Title is provided for in S69 Land Transfer Act 1952. When the survey plan is submitted to Council, pursuant to Section 223 of the Resource Management Act 1991, the surveyor shall clearly show on the survey plan the location of all easements that are required and include the easement(s) in a 'Memorandum of Easements'. Following the

approval of the survey plan an easement in gross will be registered on all Certificates of Title affected by the easement when the Survey Plan is deposited, in accordance with Section 224.

The creation of an easement imposes a restriction on the use of the dominant property and may restrict potential development of the site that may otherwise be permissible on the site.

Lot sizes of new developments shall make allowance for the constraints imposed by the required easement so as to allow for the construction of a permitted dwelling and living court. For example, where pipelines and accompanying easements are located along a side boundary of a lot, consideration shall be given to increasing the width of the lot.

All costs including legal and surveying costs associated with the creation of an easement are to be borne by the applicant.

3. Easement and Engineering Geometry

Pipes

The minimum width of an easement for water, wastewater and stormwater pipelines shall be 3 metres and pipes shall be located centrally within the easement.

The minimum width of an easement accommodating more than one pipeline shall be 4 metres and the pipes shall have a minimum separation between the outside walls of the pipes of 1 metre.

When located adjacent to a property boundary, easements for pipes shall be contained entirely within one property.

Where deep, large or critical pipes are proposed the required easement width may be greater than 3 metres or that required by the ITS. The easement width shall be determined by Council's Waters Manager following an assessment of the maintenance access requirements.

4. Easement Restrictions

No structural loads shall be placed on or transferred to the pipeline or other assets protected by easements, and any building, structure or other development shall be designed and founded so that it will not be adversely affected by public infrastructure and associated trench line, including any future excavation that may be required for the maintenance of the infrastructure.

Council requires access to all manholes 24 hours a day therefore no building over connections, junctions or manholes will be permitted.

A landowner is not permitted to alter the land within an easement area. This includes any variation to the depth, including the importation of soil or material or the excavation of soil or material within the easement covering any Council infrastructure.

In the case of existing infrastructure, new buildings must not be built over critical assets.

In the event that Council is required to undertake any maintenance, inspection or construction work on its infrastructure, Council will use due care in undertaking works within an easement area, but will not be responsible for any damage to non-permitted building works, permanent or non-permanent, which have been carried out on or over an easement in gross.

Any obstruction which may obstruct or redirect the flow within an overland flow path within an easement area will not be permitted.