

Shire of Boddington
Local Planning Policy No. 15
Buildings and structures in and near drainage easements

1. Policy Statement

This Policy sets out the Council's position relating to buildings and structures in and near drainage easements. It is Council's policy to protect assets operated by the Shire from the effects of building and construction. This Policy is intended to provide a means of ensuring an appropriate level of protection to drainage infrastructure.

2. Background and Issues

There are various drains located throughout the Boddington and Ranford townsites which are contained on private property within drainage (stormwater) easements. These assist the Shire to ensure stormwater is appropriately managed and protect the drainage infrastructure which is generally sub-surface or sometimes is via overland flow paths for stormwater runoff. This Policy generally assumes that drainage protected by an easement is typically piped.

The easements create a "burden" for the property owner as they limit development potential. Drainage services are an important asset to the community and they must be protected along with a need for appropriate access for maintenance and/or replacement.

In recent years, there has been a growing trend for smaller residential lots as well as larger dwellings and outbuildings. This has resulted in a reduction in usable yard space which can potentially increase the likelihood of landowners seeking to build in and near drainage easements.

This Policy identifies the minimum requirements from Council in regards to buildings and structures within or adjacent to drainage easements. As a means of determining where action is required, and the nature of that action, the Policy classifies buildings, structures and works and seeks to take account of potential risk factors to the Shire and property owners.

An easement is a section of land registered on the Certificate of Title providing the Shire (or other parties) a right of access for constructing, maintaining or upgrading a drain. Easements can be for other purposes such as vehicular access and may provide rights to other authorities and property owners.

3. Definitions

In this Policy, the following definitions apply:

"Drainage infrastructure" includes all infrastructure associated with the functioning of the Shire's drainage system including pipes, inspection openings and pits, swales and other measures for overland flow,

"Dwelling" - as defined in the *Residential Design Codes of Western Australia*, is "a building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family."

"Outbuildings" - are an enclosed non-habitable structure that is detached from any dwelling.

“R Codes” - the *Residential Design Codes of Western Australia*, adopted by the Western Australian Planning Commission including any updates.

“Building” - any structure or an appurtenance whether fixed or movable, temporary or permanent, placed or erected upon land, and the term shall include dwellings and buildings appurtenant to dwellings such as carports, garages and verandahs.

“Structure” - includes boundary fence, pergolas, retaining walls, swimming pool, ornamental pools, cubby house, driveways and signs.

“Professional Engineer” as defined in the *Building Code of Australia* as “a person who is:

- (a) if legislation is applicable - a registered professional engineer in the relevant discipline who has appropriate experience and competence in the relevant field; or
- (b) if legislation is not applicable -
 - (i) a Corporate Member of the Institution of Engineers, Australia; or
 - (ii) eligible to become a Corporate Member of the Institution of Engineers, Australia, and has appropriate experience and competence in the relevant field.”

4. Objectives

The objectives of this Policy are to:

- ensure that Council's costs and liabilities are minimised when constructing, replacing, maintaining or obtaining access to Shire drainage infrastructure located on private property;
- ensure there is undue restriction of access to drainage infrastructure;
- avoid physical damage to drainage infrastructure;
- ensure there is no undue structural loads on drainage infrastructure;
- control the location of development and use of land through avoiding inappropriate development in and near drainage easements;
- set out the limitations for proposed buildings and structures;
- provide increased certainty for landowners, the community and others and to assist in providing greater consistency in decision making by the Council; and
- facilitate the effective and timely processing of applications where in accordance with this Policy.

5. Application of the Policy

This Policy applies throughout the municipality where there are drainage easements or Shire drainage infrastructure on private property. This Policy applies to any proposal to erect, construct or to place any building or structure within or in proximity to any drainage easement controlled by the Shire.

6. Links to Local Planning Scheme and Other Documents

This Policy relates to various requirements set out in the *Shire of Boddington Local Planning Scheme No. 2 (LPS2)* including clause 9.6.

Most single houses, extensions to dwellings and ancillary outbuildings in the municipality do not require the submission of a Planning Application to the local government. A Planning Application is however required for a single house and incidental development in some instances as set out in clause 6.1.2(d)(vii) of LPS2 which states where the proposal “is inconsistent with a Local Planning Policy relating to development, design or related matter”.

This Policy in part elaborates on clause 6.1.2(d)(vii) of LPS2 which outlines that the planning approval of the local government is required for a single house, extensions to a dwelling and ancillary outbuildings if proposed within a drainage easement.

7. Policy Provisions

7.1 General

7.1.1 Summary of requirements for buildings and structures

Attachment 1 summarises when applications, permits and approvals are required for buildings and structures in drainage easements. In particular, it provides general guidance as to when a Planning Application, Building Permit or written Shire approval (as the beneficiary of the easement) are required.

For any building or structure, whether approved or exempt from approval which is located in a drainage easement, it may need to be dismantled or removed to construct, maintain or replace the drainage infrastructure. As outlined in section 7.11, all costs associated with this are met by the landowner.

7.1.2 Buildings generally not permitted in a drainage easement

Council's policy is not to permit the construction of buildings or the extension of buildings in drainage easements, whether or not they contain drainage infrastructure, for residential, industrial, commercial, tourist or other development.

The Council will only consider buildings within drainage easements in exceptional circumstances as generally outlined in section 7.1.3.

All buildings proposed within a drainage easement require both a Planning Application and a Building Permit.

7.1.3 Approval for buildings considered in limited circumstances

The Council will only consider possible approval for a building in a drainage easement where:

- a viable alternative location for the proposed building, if relevant to the size and use of the property, is not available on the site;
- the proposed building will not limit the ongoing maintenance and/or replacement of any existing Shire's drainage infrastructure or future asset located within the easement;
- the building is lightweight and easily removable;
- the proposed building will not jeopardise the drainage of adjoining properties; and
- the proposed building is in conformity with the *Building Code of Australia*.

Unless there are exceptional circumstances that are suitably justified by the applicant, the only forms of buildings that the Council may consider approving, on their merits, are:

- carports;
- verandahs;
- outbuildings/garden sheds generally less than 10m²; and
- pergolas.

The Council will generally require suitable methods of informing future landowners in perpetuity regarding the approval (see section 7.10). It is noted that the costs of preparing the legal agreement may be greater than the proposed building. Accordingly, landowners are cautioned to seek approval for buildings in a drainage easement and should generally ensure that any design and development is outside of the drainage easement.

7.1.4 Structures in drainage easements

A permanent structure may be appropriate within a drainage easement. For certain “low-risk” structures outlined in Attachment 1, a Planning Application and/or a Building Permit is not required. The landowner is however required to carefully design and construct the structure to not impact drainage infrastructure. In other cases, a structure will require a Planning Application, Building Permit or both.

The Council will not approve a structure within a drainage easement which will result in the Shire incurring additional costs such as having to use specialised equipment or construction techniques for future maintenance or replacement of the drainage infrastructure.

7.1.5 Key considerations for buildings and structures

When assessing a building or structure in or near a drainage easement, the Council will consider matters including:

- the nature of the building or structure including whether it is intended for habitable purpose or other use;
- the permanency of the building or structure;
- the cost of the building or structure;
- the risks involved including future dismantling or demolition to enable maintenance and/or replacement of the drainage infrastructure;
- the need for protection against structural loads and impact loads including from vehicles;
- construction methods;
- access for future maintenance, headroom and soil cover;
- the nature of the soil or ground in order to ensure the structural integrity of any on-ground floor slabs and footings. The Council will require that a professional engineer is used for footing and major retaining wall design, and that a compaction certificate is presented;
- anchoring of services to prevent flotation; and
- the drainage infrastructure type, size and depth.

If the proposed building or structure is within proximity of the drainage easement, there may be a requirement for special footings/piles and/or access to the Shire’s drainage infrastructure.

7.1.6 Onus of proof

The “onus of proof” rests with the applicant to justify their Planning Application and variations to this Policy, and for applicants to justify their application for a Building Permit.

7.1.7 Buildings in easements which do not include drainage infrastructure

Where easements exist for other services (e.g. reticulated water, sewerage, electricity), written consent is first required from the responsible service authority before the Council can

give its consent. An applicant must also meet the consent requirements of the service authority which has an interest in the easement.

7.2 Exempted structures and activities within a drainage easement

Provided the following structures are consistent with the requirements of LPS2 (including relating to flood risk land) and the R Codes, they are exempted from a requirement to submit a Planning Application:

- swimming pools and spas;
- walls/fences (side or rear boundaries);
- walls/fences (front boundary) provided they are less than 1.2 metres in height (refer to *Local Planning Policy No. 16 Residential Development and Design*);
- retaining walls if consistent with the R Codes and other Local Planning Policies;
- dog house, domestic animal or bird enclosure or a cubby house which does not exceed 2.4 metres in height above natural ground level and does not have any part of its structure located within 1.0 metre of the boundary with an adjoining lot;
- flag pole which does not exceed 6.0 metres in height above natural ground level;
- pole, tower or device used solely for the purpose of providing outdoor lighting which is no more than 6.0 metres in height above natural ground level;
- satellite dish and other domestic telecommunication installation;
- letter boxes;
- clothes lines;
- effluent disposal systems;
- LPG gas tanks for domestic purposes;
- surface treatments for vehicular access and car parking which are typically concrete, bitumen, paving or blockwork;
- landscaping, trees and shrubs;
- fishponds and ornamental ponds; and
- barbecues.

For all of the structures listed above, the following conditions are to be met:

- they do not provide structural support to a non-exempt structure;
- sufficient soil cover is maintained over any drain; and
- inspection openings and pits are not built over and remain accessible.

While noting that the above structures are exempt from the requirement to submit a Planning Application, a Building Permit and/or written approval from the Shire as the beneficiary of the drainage easement may be required.

7.3 Development types

7.3.1 Fences and walls

Fences and walls are to be not to be built over the Shire's drainage system, where there is an overland flow path, unless it can be demonstrated that there are sufficient openings to cater for the overland flow and also prevent the potential for debris blockages. Fences and walls within a drainage easement should be designed to be able to be readily dismantled. All costs associated with the removal and restatement of fences and walls are to be borne by the landowner.

7.3.2 Alteration of surface levels

On private property at least 750 mm of soil cover is to be maintained at all times over Shire drainage infrastructure. If this is not achievable then pipes are, where the soil cover is inadequate, to be protected by concrete slabs which are capable of supporting the imposed loads approved by the Council, or concrete encased by an approved licensed plumber.

7.3.3 Other utility and private services

The Council will consider co-location of services of other utility or private services within the drainage easement. This is subject to ensuring there is safe separation (including relational depth) to allow future access without risk to Shire drainage or other infrastructure.

Crossings should be made at right angles to the Shire drainage infrastructure wherever possible.

For new subdivisions or where appropriate for new development, the Council will consider the creation of shared easements to minimise the impact on property development.

7.3.4 Planting trees, shrubs and gardens

The Council prefers that trees are not planted in the drainage easement. The landowner will be responsible for any damage created by the roots of trees and shrubs to drainage infrastructure. Lawn, vegetable patches and shrubs (with a shallow root system) are permitted in the drainage easement.

7.3.5 Driveways and sealing/paving

Applicants and landowners can seal and pave driveways and car parking bays in drainage easements, however, landowners are responsible for costs in re-establishing driveways and car parking bays associated with maintenance and/or replacement of drainage infrastructure.

Trafficable surfaces are to be designed and constructed in accordance with relevant Australian standards so as to sustain the loadings which would be imposed by vehicles.

7.4 Easement width and dimensional requirements

The minimum width of any new drainage easement is 3 metres. The width of the new drainage easement is generally determined by the minimum practical width necessary for standard machinery to carry out construction, maintenance and reconstruction of the drainage system to current standards and Occupational Health and Safety requirements.

There is also a need for appropriate vertical clearances necessary for standard machinery to gain access.

7.5 Right of access

There is a need to maintain access to maintain or replace the drainage infrastructure. Accordingly, provision is to be made to ensure that the Shire has uninhibited legal and practical right of access in the drainage easement to access the Shire's drainage system.

7.6 Engineering certification

Where required by the Council, a professional engineer is to be used for footings, structural support and major retaining wall design, and the provision of a compaction certificate. The design is required to be carried out and certified/approved by a professional engineer. Detailed structural considerations and associated costs are the responsibility of the applicant/landowner.

Footings of any building located over or adjacent to a drainage easement or constructed public drainage system are to be appropriately designed and constructed. Structures located in and near the drainage easement are generally to be self-supporting so no structural loads are transmitted onto any part of the Shire's drainage infrastructure.

7.7 Hydrological/hydraulic studies and stormwater management

Especially where drainage is by overland flow, a hydrological/hydraulic study and associated design plans may be required to be prepared and certified by a professional engineer. This is to demonstrate that there are no adverse effects including diversion of overland flow paths and flooding of upstream, downstream and adjoining properties.

The Council will require applicants to ensure that stormwater from buildings and structures are appropriately managed so as not to create undesirable impacts to adjoining/nearby properties. The Council prefers that stormwater disposal is retained within a site where possible or at least detained within the site. Where stormwater cannot be retained on site, stormwater should be directed to a Shire stormwater legal point of discharge.

7.8 Where no easement exists

When a Planning Application or Building Permit is submitted and the property contains Shire drainage infrastructure which is not burdened by a drainage easement, consent may be conditional upon the property owner agreeing to grant the Shire a drainage easement. All legal and surveying costs associated with the creation of the easement are generally to be borne by the Shire.

7.9 Duty of care and preventing damage

People working within and near the Shire drainage network are required to ensure they undertake a duty of care including working in an appropriate and safe manner that also does not interfere with Shire drainage infrastructure or other services.

Care should be taken during the construction of works to ensure there is no damage to drainage infrastructure. Common activities which can damage Shire drainage infrastructure include excavations, boring and tunnelling, ground compaction, pile driving and movement of heavy loads and vehicles. The landowner is required to meet the costs should damage occur to the Shire's drainage infrastructure.

7.10 Caveats and legal agreements

If the Council approves a building or structure within a drainage easement, it may impose conditions that are binding on current and future owners of the property. Subject to the risk and likely cost of dismantling or removing the building or structure, the Council may approve the building or structure and may where considered appropriate impose a condition requiring a caveat and/or legal agreement registered on the title that:

- allows access at any time for the Shire or its authorised representatives;
- sets out any costs related to dismantling, removal, and subsequent re-assembling, re-installation, re-instatement of the building and/or structures are to be borne by the property owner; and
- the owner indemnifies the Shire from and against all losses, liabilities, damages, costs and expenses directly and indirectly incurred by the Shire as a result of the construction of the building or structure and any structural deficiencies of the building or structure.

The Shire or its agents will prepare the legal agreement after the applicant has been advised that the building or structure is conditionally approved and the applicant pays for the cost of preparing the legal agreement and registering the agreement.

All costs associated with the creation of the caveat and/or legal agreement are to be borne by the applicant/landowner.

Where a legal agreement is required, it must be lodged with Landgate and registered on the title.

7.11 Costs

All costs associated with the removal of any building, structure or works associated with accessing, constructing, reconstructing and/or relocating the Shire's drainage infrastructure are to be borne by the applicant or landowner.

The costs associated with protection of drainage infrastructure shall be borne by the applicant/landowner. This does not include costs for normal maintenance, replacement or repair of the Shire's infrastructure where those costs would have been incurred in any event. It may, however, include the construction, amplification, replacement or relocation of a Shire service where the works are necessary to offset the effect of the applicants/landowners proposed/approved works.

8. Administration

8.1 Matters to be addressed prior to formally lodging the application

Proponents are encouraged to discuss proposals that seek to vary Policy requirements with the Shire administration early on in the planning process and prior to the formal lodgement of any Planning Application or application for a Building Permit.

The potential impact of building and construction activities should be considered at the preliminary design stage. In particular, care should be taken to avoid the following:

- restriction of access to drainage infrastructure;
- physical damage to drainage infrastructure; and
- the imposition of undue structural load on drainage infrastructure which reduces its effective life and/or complicates future access.

8.2 Application requirements

Planning Applications are to include the following:

- the requirements set out in sections 6.2.1 and 6.2.2 of LPS2 which includes a site plan and setting out the location of the drainage easement and any other easements on the property;
- floor plan/s and elevations;
- details of intended use/s;
- filling in the Planning Application form; and
- payment of the Shire Planning Application fee.

Subject to the proposed location and the scale of the proposed development, the Council may also require the applicant to provide:

- detailed contour information from a licence surveyor;
- cross sections showing the extent of cut and fill;
- written information justifying why any requirements of this Policy should be varied and justifying the proposal; and
- any other plan or information that the Council may reasonably require to enable the application to be determined.

Should a Planning Approval be issued, it will generally be necessary for the proponent to submit a Building Permit Application (which gains necessary approval) prior to undertaking construction.

8.3 Assessing the Planning Application

In assessing a Planning Application for a building or structure within or adjoining a drainage easement, the Council will have regard to matters including the following:

- lot size, shape and features;
- floor area of the proposed building or size of the structure;
- construction materials;
- intended use of the building or structure;
- this Policy including section 7.1.5;
- LPS2;
- information provided by the applicant and any submissions received; and
- any other circumstance and factor affecting the application in the opinion of Council.

Should a Planning Application not comply with requirements of this Policy, the application will be referred to Council for consideration.

Where objections are received and the objections are not able to be adequately dealt with through conditions of approval, the application will be referred to Council for determination.

The Council may refuse a Planning Application where the application is inconsistent with this Policy or LPS2, or based on information set out in any submission received.

8.4 Consultation with landowners and stakeholders

The Shire administration may seek comments on any Planning Application as considered appropriate.

8.5 Planning conditions

In granting planning approval, the approval may include conditions to address requirements set out in this Policy. Conditions may include, but not be limited, to the following:

- the Council reserves the right to excavate, lay, repair or replace pipes within the easement and to remove, and not replace buildings or structures built in the easement, whether or not consent for those buildings and structures has been given;
- the Council is not liable for any damage to buildings or structures in the easement which may be caused as a result of any such works on the basis that reinstatement of such damage is the responsibility of the landowner;
- excavation for footings is to be kept clear of drainage infrastructure if the easement contains an underground drain;
- prior to the issue of a Building Permit, any drain in the easement is to be located and a detailed drawing/s included in the Building Permit application which indicates the means of foundation construction;
- the imposition of a caveat and/or preparing and registration of a legal agreement;
- the owner agrees that the Shire or its authorised agents can enter into the and upon the land at any time for the purpose of inspecting, constructing, maintaining, repairing or replacing any drainage infrastructure of the Shire; and
- the owner agrees to disclose the existence of and the conditions of the approval to prospective purchasers or mortgagees of the land.

9. Approval authorisation

Authority to implement the Policy will be delegated to the Chief Executive Officer other than as outlined in this Policy.

10. Final adoption

Final adoption of the Policy was resolved by the Council on 16th April 2013.

Attachment 1 – Summary of when applications, permits and approvals are required within a drainage easement			
Building / structure in drainage easement	Is a Planning Application required?	Is a Building Permit required?	Is there a need for written Shire approval as the beneficiary of the easement?
Buildings			
Single House or extension to dwelling, including attached patio	Yes	Yes	Addressed via Planning Application and Building Permit.
Verandahs and attached pergolas to dwelling	Yes	Yes	Addressed via Planning Application and Building Permit.
Other residential development	Yes	Yes	Addressed via Planning Application and Building Permit.
Industrial, commercial, or tourist development	Yes	Yes	Addressed via Planning Application and Building Permit.
Outbuildings	Yes	Yes	Addressed via Planning Application and Building Permit.
Sea container	Yes, unless for temporary period consistent with Local Planning Policy 1.	Generally yes	Addressed via Planning Application or Building Permit.
Garages	Yes	Yes	Addressed via Planning Application and Building Permit.
Carports	Yes	Yes	Addressed via Planning Application and Building Permit.
Structures			
Decking	No	Yes	Addressed via Building Permit.
Side and rear fences and walls	No	Generally no	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.
Front fences and walls	Generally no unless above 1.2 metres in height.	Generally no	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.
Retaining walls above 0.9 metre in height	Yes, unless associated with other development.	Yes	Addressed via Planning Application or Building Permit.
Retaining walls below 0.9 metre in height	No	No	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.
Dog house, domestic animal or bird enclosure, or a cubby house	No, provided it is consistent with LPS clause 6.1.2(l)(i).	No	No, although the landowner is required to carefully design to not impact drainage infrastructure.
Swimming pool and spas	No	Yes	Addressed via Building Permit.

Flag pole (less than 6 metres in height)	No	No	No, although the landowner is required to carefully design to not impact drainage infrastructure.
Pole, tower or device used solely for the purpose of providing outdoor lighting which is no more than 6.0 metres in height above natural ground level	No	No	No, although the landowner is required to carefully design to not impact drainage infrastructure.
Satellite dish and other domestic telecommunication installation	No	No	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.
Letter boxes	No	No	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.
Clothes lines	No	No	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.
LPG gas tanks for domestic purposes	No	No	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.
Signs	Possibly, unless exempt in LPS2.	No	Addressed via Planning Application. For signs exempt from requiring planning approval, the landowner is required to carefully design and construct to not impact drainage infrastructure.
Other			
Driveways and parking	No, unless associated with development requiring approval.	No	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.
Other utility and private services	No	No	Yes
Effluent disposal systems	No	No	Addressed through a wastewater disposal application to the Shire.
Trees	No	No	Yes
Shrubs	No	No	No, although root systems should be shallow to not impact drainage infrastructure.
Lawn, garden or vegetable patch	No	No	No
Fishponds and ornamental pools	No	No	No, although the landowner is required to carefully design and construct to not impact drainage infrastructure.