

# **BUILDING OVER OR ADJACENT TO CONSTRUCTED COUNCIL DRAINAGE SYSTEMS AND EASEMENTS**

**Program:** Transport and Drainage Infrastructure Planning  
**Date of Approval:** 15 August 2023  
**Review Date:** 15 August 2026

## **Scope**

The policy sets out Mackay Regional Council's (MRC) requirements and technical guidelines applying to all buildings and structures on private property that contain MRC's drainage infrastructure.

## **Objective**

This policy aims to:

- (a) Ensure protection against structural damage to existing underground infrastructure services from construction works and/or imposed loads;
- (b) Ensure access is available for future maintenance of MRC assets/infrastructure;
- (c) Prevent consequential damage to the owner's structures;
- (d) Maintain the amenity (functional use) of the property and allow the occupant use of the property without unnecessary constraints; and
- (e) Ensure that MRC's costs and liabilities are minimised when constructing, replacing, maintaining or obtaining emergency access to constructed public drainage systems located within private property.

## **Policy Statement**

The following four performance criteria identify the specific objectives MRC aims to achieve for the purpose of this guideline:

- (1) the carrying out of building work near or over a stormwater drain or associated structure must not:
  - (a) interfere with or adversely affect the function of the service; or
  - (b) place any additional load on the service.
- (2) Adequate access must be provided to the stormwater drain for future maintenance.

## BUILDING OVER OR ADJACENT TO CONSTRUCTED COUNCIL DRAINAGE SYSTEMS AND EASEMENTS

- (3) Adequate access must be provided to any access covers associated with a stormwater drain.
- (4) Access must be maintained to a stormwater connection point at all times.

**Note** that this guideline and associated documentation applies only to stormwater systems and proposed works outside of the scope of QDC MP 1.4.

MRC considers that to the extent this policy engages and limits, or potentially limits, any human rights, that limitation is reasonable in that it is proportionate and justified.

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This process to remain in force until otherwise determined  
by Mackay Regional Council

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# **BUILDING OVER OR ADJACENT TO CONSTRUCTED COUNCIL DRAINAGE SYSTEMS AND EASEMENTS**

## **1.0 Principles**

Property owners and developers occasionally want to build new buildings or structures near to, or over, existing under or in-ground infrastructure associated with MRC's stormwater services. MRC wishes to ensure such developments can proceed without impeding MRC's current and future ability to offer services and without causing unnecessary risk of damage to both MRC's and privately-owned infrastructure.

Drainage infrastructure includes all stormwater drains or open channels and associated infrastructure, such as access holes, connection points between household and MRC services.

This policy provides requirements for:

- a). Approval of permits under Local Law No. 1 (Administration), Subordinate Local Law No. 1.1 (Alteration or Improvement to Local Government Controlled Areas and Roads) and Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads).
- b). Guidelines for consideration of erection of structures over or near drainage infrastructure as contained in the '*Mackay Regional Council – Conditions for Approval – Building Over or Adjacent to Constructed Council Drainage Systems and Easements*'.

## **2.0 Complaints**

Any complaints in relation to a decision or a service relating from this policy will be assessed and managed in accordance with MRC's Administrative Action Complaints Policy, a copy of which can be found on MRC's website.

When an individual feels that they are the subject of MRC's failure to act compatibly with human rights, they can make a complaint directly to MRC. These complaints will be assessed against the Human Rights Act 2019.

Complaints may be made as following:

In writing to  
Chief Executive Officer  
Mackay Regional Council  
PO Box 41  
MACKAY QLD 4740

Via Email - [complaints@mackay.qld.gov.au](mailto:complaints@mackay.qld.gov.au)

In person at the following MRC Client Services Centres:

- MRC Mackay Office – 73 Gordon Street, Mackay
- MRC Sarina Office – 65 Broad Street, Sarina
- MRC Mirani Council Office – 20 Victoria Street, Mirani

### 3.0 Definitions

To assist in interpretation the following definitions shall apply:

**Stormwater drains, the building, structure or material** is defined as being located over or adjacent to the stormwater drainage system if the building, structure or material is located such that the offset of the nearest point of the structure from the centerline of the stormwater drain is a distance less than the sum of the depth to the invert of the stormwater drain plus the pipe diameter plus two (2.0) metres, divided by two and in the case of open drainage systems that the offset of the nearest point of the structure from the centerline of the open stormwater drain is a distance less than the sum of the depth to the invert of the stormwater drain plus two (2.0) metres.

**CCTV** shall mean closed-circuit television inspection conducted to inspect the condition of existing underground assets.

**Council** shall mean all elected representatives, including the Mayor of Mackay Regional Council.

**Demountable** shall mean any structure or roof that can be manually dismantled and removed from its current position by two people within a four hour period.

**Easement** shall mean an area of land, or part of a lot reserved by law for a specified purpose, such as for access.

**Horizontal Distance** shall mean the minimum distance between the outermost edge of the walls, slab, footing, driven pile, bored pile and any integral parts of the building and the outside of the service or associated structure.

**Qualified Engineer** shall mean Suitably qualified Engineer (civil, structural or geotechnical) having RPEQ accreditation or listed on the National Professional Engineer Register (NPER).

**Maintenance Hole** shall mean a chamber with a removable cover that allows human and machine access to an underground pipeline.

**MRC** shall mean Mackay Regional Council.

**Structure** shall mean and includes all non-demountable buildings such as a masonry fence, house, deck, pergola, swimming pool, retaining wall and water storage tank.

**Interference** shall mean dig up, expose or damage.

**Zone of Influence** shall mean the area under the ground, which is deemed to be loaded by the footings of the building or structure.

### 4.0 Review of Policy

This policy will be reviewed when any of the following occur:

## **BUILDING OVER OR ADJACENT TO CONSTRUCTED COUNCIL DRAINAGE SYSTEMS AND EASEMENTS**

- The related documents are amended or replaced.
- Other circumstances as determined from time to time by the CEO.

Notwithstanding the above, this policy is to be reviewed as required or no more than three (3) years.

### **5.0 Reference**

- Mackay Regional Council – “Conditions for Approval – Building Over or Adjacent to Constructed Council Drainage Systems and Easements”;
- Local Law No. 1 (Administration) 2011;
- Subordinate Local Law No. 1.1 (Alteration or Improvement to Local Government Controlled Areas and Roads) 2011;
- Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011;
- Queensland Development Code, MP 1.4 – Building over or near relevant infrastructure.
- Mackay Regional Council - Planning Scheme Policy – Stormwater Drainage


### **6.0 Attachments**

1. Conditions for Approval – Building Over Or Adjacent to Constructed Council Drainage Systems and Easements

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Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		CEO	29.08.17
2	Policy Review	Minor amendments	CEO	28.07.20
3	Policy Review	Minor amendments	CEO	15.08.23

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# Conditions for Approval - Building Over or Adjacent to Constructed Council Drainage Systems and Easements

Version 7 | June 2023

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## **1. INTRODUCTION**

### **1.1 Citation**

This document shall be known as the Transport & Drainage Infrastructure Planning “Conditions for Approval - Building Over or Adjacent to Constructed Council Drainage Systems and Easements”.

### **1.2 Objectives and Scope**

#### Scope of Policy

This policy and associated technical guidelines applies to all buildings and structures on private property that contain MRC’s drainage infrastructure. For the purpose of this policy, MRC’s drainage infrastructure includes all stormwater drains or open channels and associated infrastructure, such as access holes, connections points between household and MRC services.

#### Objectives

Property owners and developers occasionally want to build new buildings or structures near to, or over, existing under or in-ground infrastructure associated with MRC’s stormwater services. MRC wishes to ensure such developments can proceed without impeding MRC’s current and future ability to offer services and without causing unnecessary risk of damage to both MRC’s and privately-owned infrastructure.

This policy aims to:

- (a) Ensure protection is provided against structural damage to existing underground infrastructure services from construction works or imposed loads;
- (b) Ensure access is available for future maintenance of the services;
- (c) Prevent consequential damage to the owner’s structures;
- (d) Maintain the amenity (functional use) of the property and allow the occupant use of the property without unnecessary constraints.
- (e) Ensure that MRC’s costs and liabilities are minimised when constructing, replacing, maintaining or obtaining emergency access to constructed public stormwater drainage systems/assets located within private property.

### **1.3 Head of Power**

The head of power for the implementation of this policy is given under Chapter 3 Part 3 Division 2 Sections 77 and 80 of *the Local Government Act*. Associated requirements are referred to under the *Workplace Health and Safety Act 2011* and the Queensland Development Code MP 1.4 – Building over or near relevant infrastructure.

### **1.4 Definition**

For a stormwater drain the building, structure or material is defined as being located over or adjacent to the stormwater drainage system if the building, structure or material is located that the offset of the nearest point from the centreline of the stormwater drain is a distance less than sum of the depth to the invert of the stormwater drain plus the pipe diameter plus two (2.0) metres, divided by two and in the case of open drainage systems that the offset of the nearest point of the

structure from the centreline of the open stormwater drain is a distance less than the sum of the depth to the invert of the stormwater drain plus two (2.0) metres.

**AEP** shall mean Annual exceedance probability (AEP). The probability of exceedance of a given discharge within a period of one year. AEP is generally expressed as a percentage.

**CCTV** shall mean closed-circuit television inspection conducted to inspect the condition of existing underground assets.

**Demountable** shall mean any structure or roof that can be manually dismantled and removed from its current position by two people within a four-hour period.

**Easement** shall mean an area of land, or part of a lot reserved by law for a specified purpose, such as for access.

**Horizontal Distance** shall mean the minimum distance between the outermost edge of the walls, slab, footing, driven pile, bored pile and any integral parts of the building and the outside of the service or associated structure.

**Qualified Engineer** shall mean suitably qualified engineer (civil, structural or geotechnical) having RPEQ accreditation or listed on the National Professional Engineers Register (NPER).

**Maintenance Hole** shall mean a chamber with a removable cover that allows human and machine access to an underground pipeline.

**Structure** shall mean and includes all non-demountable buildings such as a masonry fence, house, deck, pergola, swimming pool, retaining wall and water storage tank.

**Interference** shall mean dig up and expose MRC infrastructure, including exposing damage.

**QUDM** shall mean the most recent version of the Queensland Urban Drainage Manual

**Zone of Influence** shall mean the area under the ground, which is deemed to be loaded by the footings of the building or structure.

## 2. PRINCIPLES

The guideline is to be implemented according to the following requirements:

### 2.1 Performance Criteria

The following four performance criteria identify the specific objectives MRC aims to achieve for the purpose of this policy.

- (1) The carrying out of building work near or over a stormwater drain or associated structure must not:
  - (a) interfere with or adversely affect the function of the service; or
  - (b) place any additional load on the service.

- (2) Adequate access must be provided to the stormwater drain for future maintenance.
- (3) A two (2.0) metre radius exclusion zone measured from the centre of an access lid is to be provided to any access covers associated with a stormwater drain.
- (4) Access must be maintained to a stormwater connection point at all times.

## **2.2 Guiding Principles**

MRC's policy to managing the issue of building over or near MRC infrastructure is guided by the following principles:

- (i) Where possible, locate MRC infrastructure on public land.
- (ii) Where not possible, acquire easements over MRC's infrastructure on private land.
- (iii) Where (i) - (ii) are not possible, require / request building / structure be located elsewhere on the property.
- (iv) Where (i) - (iii) are not possible, relocate service to road reserve (or other agency property).
- (v) Where (i) – (iv) are not possible, and if the hydraulic integrity of agency services may be degraded by relocating the service, and an inspection shows the structural condition of the infrastructure suitable to building over, or it can be improved (e.g. by relining), then permit building over infrastructure with conditions, using a MRC policy to guide decisions.
- (vi) Where (i) – (iv) are not possible, and if the hydraulic integrity of agency services (as a whole) will not be degraded by relocating the service around the building / structure, relocate infrastructure around new building / structure.

This document applies only to stormwater infrastructure and scenarios outside the application of QDC MP 1.4 and the relevant acceptable solutions identified.

## **2.3 Environmental Considerations**

In addition to a technical assessment under this policy, any proposal for building over or adjacent to a constructed drainage system will be subject to an assessment in accordance with MRC's Local Planning Scheme of the merits or impacts of the proposal. Compliance with the technical requirements of this policy is not to be taken as implying that MRC approval will be issued.

The purpose of the Policy is to set out guidelines to assess this impact and determine any developer contribution / development condition required to offset or mitigate this impact.

## **2.4 Easement Requirements for MRC Drainage Systems**

MRC will acquire drainage easements over all constructed public drainage systems within private property.

When a development application is submitted and the property contains a MRC drainage system not burdened by a drainage easement, development consent shall be conditional upon the property owner agreeing to grant MRC a drainage easement. All costs including legal and surveying associated with the creation of the easement are to be borne by the applicant.

Easement documentation where applicable shall include items such as:

- Indemnities in MRC's favour for any future damages due to failures in the drainage system as included in Appendix C.
- Provide enforceable requirements where MRC can at some future date require removal of the owner's structure to enable repair of the drainage system with all costs for both removal and reinstatement being borne by the property owner.
- Ensure that the easement requirements be lodged against the property title so that the current and prospective future owners are aware of the ongoing requirements.

Where a developer/property owner obtains MRC approval to reconstruct and/or relocate any existing constructed public drainage system within the subject site, the developer/property owner shall create drainage easements in favour of MRC, to suit the relocated/reconstructed drainage system.

All costs associated with the reconstruction and/or relocation of MRC's drainage system are to be borne by the applicant. This also includes hydrological and hydraulic studies and design plans prepared by a Qualified Engineer.

## **2.5 Hydraulic Design Requirements**

The design Average Exceedance Probability (AEP) for major events shall be 1%.

For in-fill development and reconstruction works within existing developed areas, MRC may vary the design AEP to be compatible with existing conditions. Where MRC approves a lower AEP for in-fill development, it will not be less than 2%.

For minor events, the AEP depends on the zoning of the land being serviced by the drainage system. The minor system design AEPs shall be:

- |                     |       |
|---------------------|-------|
| • Open space        | 100%  |
| • Residential       | 50%   |
| • Commercial        | 20%   |
| • Industrial        | 20%   |
| • Rural Residential | 20%   |
| • Central Business  | 6.67% |

For cross-drainage requirements, refer to Tables 7.3.1 and 7.3.2 in QUDM.

Where a development is designed in such a way that the major system flows involves surcharge across private property, then the underground system (both pipe and inlets) shall be designed to allow the collection and containment of flows having an AEP of 1% from the upstream catchment within an easement in the private property.

A surcharge path shall be defined for systems even where 1% AEP flows can be maintained within the underground system. Easements shall be provided in private property over pipe systems and surcharge paths.

## **2.6 Reserves**

### Urban Developments

All overland flow paths and open channels not located within a road reserve or park reserve shall be located within an easement or drainage reserve.

All detention basins shall be located within a drainage reserve.

Easements shall be provided through private property over underground drains or overland paths to the lawful point of discharge. All easements shall be in MRC's favour and provided free of cost to MRC.

Overland flow paths between allotments may be provided within local linkage or linear parks which shall have a minimum width of 15 m. Narrow reserves between allotments to cater for overland flow paths only, will require specific approval and are generally not acceptable.

Any linkage of reserves is to be designed as an integral part of a development by providing access to parks, schools, shops and other community facilities.

The location and layout of any linkage of reserves shall confirm to the principles of Crime Prevention through Environmental Design (CPTED).

The minimum width of the easement or reserve shall be the greater of:

- a) The sum total of the outer width of the largest underground culvert plus 2.5m either side.
- b) The sum total of the open channel (including batters up to 1:4 slope) plus 1.0m from the top of each batter point on each side.
- c) Where MRC has approved open channel batters steeper than 1:4 the minimum width of the easement will be the sum total of the required setback at FSL (Finished Surface Level) from the top of the batter shall be 1.0m away from the batter point and 4.0m away from the top of the opposing batter so as to provide adequate and safe access for MRC plant to maintain the channel.

Evidence of any Deed of Agreement necessary to be entered into to construct any part of the drainage system shall be submitted prior to the issuing of a Decision Notice for Operational Works. Easements will need to be created prior to the endorsement of the plan of survey for the subdivision.

Evidence of any Agreement reached with adjacent landowners to allow an increased flood level on their property, or otherwise adversely affect their property and witnessed by an independent person shall be submitted prior to the issuing of a Decision Notice for Operational Works.

#### Rural Residential Development

MRC will assess the length of any downstream easement, to its lawful point of discharge, on an individual basis. In general, an easement, capable of containing the flow from a storm event having a 1% AEP, will be required immediately downstream of the development except in the following circumstances:

- (a) Where a well-defined natural watercourse exists; and
- (b) Where the watercourse can contain the 1% AEP flow.

MRC will assess the length of any downstream easement, to its lawful point of discharge on an individual basis.

An easement is to be provided upstream of any culvert inlet where the calculated 1% AEP headwater extends beyond the road reserve and into private property.

Evidence of any Deed of Agreement necessary to be entered into to allow an increased flow level on their property, or otherwise adversely affect their property and witnessed by an independent person shall be submitted prior to the Issuing of a Decision Notice for Operational Works.

#### Easement Conditions

In general, MRC's Standard Terms Document for Easements (Registered Dealing No. 721379342) must be applied to the area in question to the extent that the easement is for Drainage purposes. A copy of the registered standard terms is contained in Appendix B.

### **2.7 Permanent Structures over MRC's Drainage System**

The construction of buildings or other permanent structures over constructed public drainage systems is not favoured and will generally not be approved by MRC. However, in certain cases, consideration may be given to a development proposal which can satisfy the minimum requirements for construction and maintenance access and also comprehensively demonstrate that objectives of this policy will be met. In these cases, it will also be necessary to demonstrate that the site cannot be reasonably developed without building over, or by relocating MRC's drainage system.

Filling over MRC's drainage systems may be permitted, subject to the approval of MRC's technical staff with supporting hydraulic studies prepared by a Qualified Engineer in the relevant field.

The hydraulic study is to demonstrate that there are no adverse effects including diversion of overland flow paths and flooding of upstream and downstream properties.

*Note: Construction of buildings or other permanent structures under constructed public drainage systems is not permitted.*

MRC may permit structures over constructed public drainage systems which are lightweight and easily demountable or removable such as carports and car stand areas. Easement conditions in favour of MRC will need to be created on the title, requiring any costs related to dismantling, removal and subsequent reassembling, re-installation, re-instatement of the above structures is to be borne by the property owner.

Fences are not to be built over MRC's drainage system as they impede the 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 must be designed to be able to be readily dismantled. All costs associated with the removal and reinstatement of the fences is to be borne by the applicant.

### **2.8 Minimum Requirements for Construction and Maintenance Access**

MRC may give a property owner approval to build a permanent structure over an existing MRC drainage system where the structure provides adequate access for MRC to reconstruct and maintain the drainage system. MRC will not approve a structure over a public drainage system which will result in MRC incurring

additional costs by having to use specialised equipment or construction techniques.

(a) Dimensional Requirements

MRC's dimensional requirements for access are governed by the minimum horizontal and vertical clearances necessary for standard machinery to gain access to and undertake construction and maintenance of public drainage systems. These clearances include:

- (i) The vertical height from the surface level over the public drainage system to the underside of the overlying structure. This is generally governed by the vertical swept path of backhoes, excavators and cranes and must take into account clearances necessary to load and unload standard trucks. The minimal vertical height shall be 5.0 metres.
- (ii) The horizontal distance between permanent obstructions along the line of the public drainage system. This is generally governed by turning circles and horizontal swept paths of backhoes, excavators and cranes and must take into account the limited manoeuvrability capabilities of these standard machines. The horizontal clearance shall be the minimum of 3.0 metres or the pipe / channel diameter plus 2 metres.

The vertical and horizontal clearances through the structure for access to the MRC drainage system is governed by the travelling heights, width and turning radius of standard construction machinery, and must take into account the size of loaded vehicles required to deliver construction materials or equipment. The minimum vertical clearance shall be 3.5 metres and the horizontal clearance shall be 3.5 metres on straight sections with increases provided as necessary on vertical and horizontal curves. A right of carriageway in favour of MRC will need to be created over the access way prior to occupation of the building.

*Note: The above dimensional values are minimums only. The required clearances will vary according to the size of the MRC drainage system and are subject to the discretion of MRC's technical staff.*

b) Structural Provisions

***Design Standards – Minor Structures***

Figures 1 and 2 showing the exclusion zone and design of footings required under this Policy, are given in the Appendix A of this document. Prior to commencing works on the structure, a plan of the footing design shall be assessed and approved by an appropriately Qualified Engineer. A copy of the approved plan must be submitted as part of the Building Over Stormwater Application.

- Minor Structures

These shall include but not be limited to the following:

- Garages (Clause 10a) under 63 m<sup>2</sup> that do not require any cut / fill in excess of one half (0.5) m.
- Carports (Class 10a) under 63 m<sup>2</sup> that do not require any cut / fill in excess of one half (0.5) m.
- Patios, decks, verandas, stairways and similar structures. (Class 10 a)

- Retaining walls (Class 10b) (including ones requiring fill over the stormwater line) up to two(2) m in height.
- (a) *For Footings in Zone B*
  - (i) All footings shall be extended so that the base of the footing is founded a minimum of 300 mm below the angle of repose in Zone B;
  - (ii) A relevantly Qualified Engineer (RPEQ) shall certify that the footing will not impose any additional loading on the stormwater. The Engineer is required to submit a Compliance Certificate for Building Design (Form 15).
- (b) *For Footings in Zone A*
  - (i) All loads shall be transferred by beams across Zone A onto either supporting piers or a continuous footing which shall be founded a minimum of 300 mm below Zone B;
  - (ii) A minimum clearance of 600 mm shall be provided between the base of the transfer beam and top (obvert) of the stormwater;
  - (iii) A Qualified Structural Engineer shall certify that the footing will not impose any additional loading on the stormwater and that the footing is structurally adequate to span Zone Q. The Engineer is required to submit a Compliance Certificate for Building Design (form 15);
  - (iv) Where the age of stormwater to build over is greater than two(2) years of age the stormwater is to be Closed Circuit Television inspected. If the condition of the stormwater is deemed to be unsuitable by MRC, the section of stormwater shall be either of the following:
    1. Relocated clear of the proposed building or structure at the applicant's expense. The design is to be submitted and approved by MRC prior to the construction of the stormwater.
    2. Replace with a pipe material nominated by MRC from property boundary to property boundary at the applicant's expense.
    3. Relined by a contractor nominated by MRC for the full length of pipe between manholes. Costs to the applicant will be determined by MRC based on the condition of the existing stormwater.

### **Design Standards – Major Structures**

Figures 1 and 2 showing the exclusion zone and design of footings required under this Policy, are given in the Appendix A of this document. Prior to commencing works on the structure, a plan of the footing design shall be assessed and approved by a Qualified Engineer. A copy of the approved plan must be submitted as part of the Building Over Stormwater Application.

- **Major Structures**

These shall include but not be limited to the following:

- Dwellings of all kinds (Class 1a, 2,
- In-ground swimming pools (Class 10b)



- Commercial and industrial buildings (Classes 3 to 9)
- Garages over 63 m<sup>2</sup> (Class 10a)
- Carports over 63 m<sup>2</sup> (Class 10a)
- Retaining walls greater than 2 m in height (Class 10b)

In General, establishment of major structures over the stormwater system is not favoured. Alternative designs need to be provided by a Qualified Engineer to verify that a viable alternate route for stormwater of similar capacity exists through the site or other locations should the built over section of the system failure.

(a) *For Footings in Zone B*

- (i) All footings shall be extended so that the base of the footing is founded a minimum of 300 mm below line of repose in Zone B;
- (ii) A relevantly Qualified Engineer (RPEQ) shall certify that the footing will not impose any additional loading on the stormwater. The Engineer is required to submit a Compliance Certificate for Building Design (Form 15).

(b) *For Footings in Zone A*

- (i) All loads shall be transferred by beams across Zone A onto either supporting piers or a continuous footing which shall be founded a minimum of 300 mm below line of repose Zone B;
- (ii) A minimum clearance of 600 mm shall be provided between the base of the transfer beam and top (obvert) of the stormwater;
- (iii) A relevantly Qualified Engineer (RPEQ) shall certify that the footing will not impose any additional loading on the stormwater and that the footing is structurally adequate to span Zone A. The Engineer is required to submit a Compliance Certificate for Building Design (Form 15).

Where the age of stormwater to be built over or adjacent to is greater than 2 years the stormwater is to be CCTV inspected. If the condition of the stormwater is deemed to be unsuitable by MRC, the section of stormwater shall be either of the following:

1. Relocated clear of the proposed building or structure at the applicant's expense. The design is to be submitted and approved by MRC prior to the construction of stormwater.
2. Replace with a pipe material nominated by MRC from property boundary to property boundary at the applicant's expense.
3. Relined by a Contractor nominated by MRC for the full length of pipe between manholes. Costs to applicant will be determined by MRC based on the condition of the existing stormwater.

(c) *Right of Access by MRC*

Provision is to be made to ensure that MRC has uninhibited legal right of access through the overlying structure to the MRC drainage system.

To ensure that MRC has uninhibited access through the overlying structure, for emergency purposes, gates or doors cannot be installed along the path of access, between the public road and the MRC drainage system.

To ensure that MRC has legal right of access through the overlying structure, a Right of Carriageway is required to be granted to MRC over the full length and width of the access, between the public road and the public drainage system. The Right of Carriageway shall be created to facilitate the minimum dimensions required by Paragraph 2.8(a)(ii).

## 2.9 Minimum Easement Width Requirements

The width of any drainage easement is controlled by the minimum practical width necessary for standard machinery to carry out reconstruction of the public drainage system to current standards and Occupational Health & Safety requirements. For this reason, the minimum width of any drainage easement shall be 3.0 metres.

For piped systems having a width greater than 1.0 metre, the drainage easement shall have a minimum width equal to the external width of the pipe / channel plus 2 metres, rounded to the next 0.1 metre (See Figure 1 below).

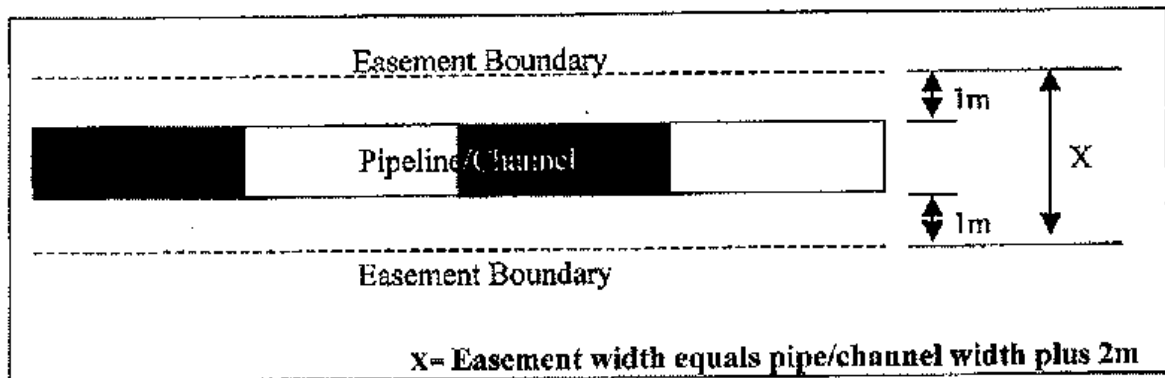


Figure 1 – Drainage Easement Width (Straight)

If bends occur in the MRC drainage system then the minimum easement width shall be increased as detailed in figure 2 below.

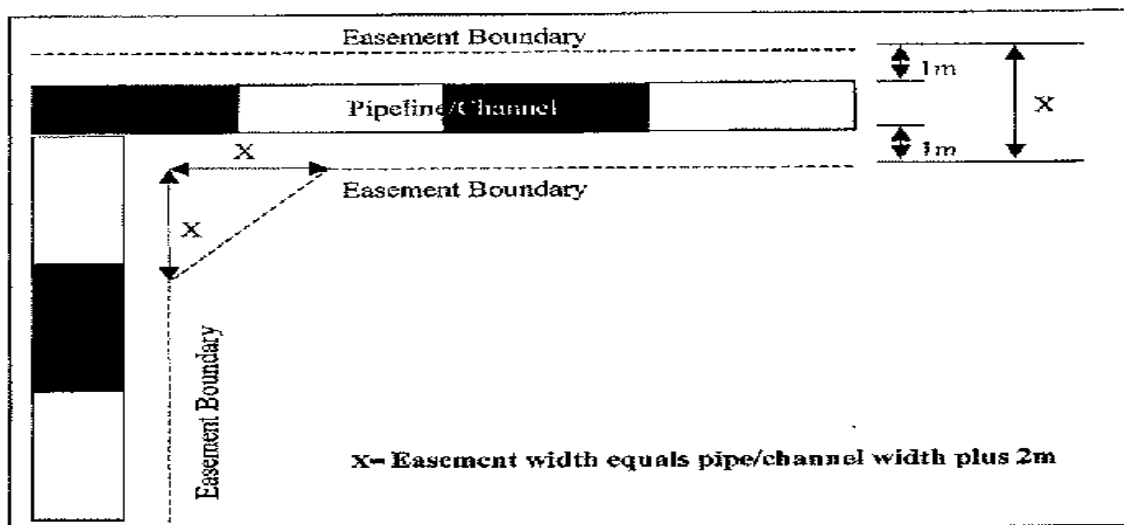


Figure 2 – Drainage Easement Width (Bend)

### 3. SITE WORKS

- 3.1 Prior to commencing works, the exact location and depth of the stormwater drainage system shall be ascertained on-site. Any discrepancies between the actual and recorded location and depth shall be reported to MRC for investigation before proceeding. All costs for such investigation shall be borne by the applicant.
- 3.2 Adequate measures shall be taken to ensure the stormwater drainage system is protected from damage at all times. In particular, heavy earthmoving equipment and driven piles shall not be used near the stormwater drainage system. In the event that the system is damaged MRC must be notified immediately. All costs associated with rectification of damage to MRC assets will be recovered from the owner / builder / applicant.

### 4. INSPECTION REQUIREMENTS

- 4.1 The following stages of work shall be presented for inspection as applicable:
- (a) **All footing systems located within the Zone of Influence** prior to construction shall be inspected and certified by the building certifier or a professional engineer.
  - (b) **All exposed stormwater drains** prior to backfilling a MRC Inspector shall first be given the option of inspecting the exposed stormwater pipes. A minimum 24 hours notification of inspection is required.
  - (c) **All stormwater drains** to be CCTV inspected before and after building works. Ten (10) days' notice is required. Costs are to be met by the applicant.

### 5. STORMWATER DRAINAGE SYSTEM IMPROVEMENTS

- 5.1 Prior to commencing any site works the applicant shall make application to MRC for an assessment of the following:
- (a) **The condition of the stormwater drains** – All stormwater drains shall be inspected, at the applicant's expense, by MRC's CCTV inspection camera to ascertain the internal condition of the sewer;
  - (b) **The need for additional maintenance holes** – additional maintenance holes may be necessary adjacent to the building to improve emergency operations;
  - (c) **The need to renew the stormwater drain** – old or damaged pipes will generally require renewing from property boundary to property boundary;
  - (d) **The need to reline the stormwater drain between maintenance hole to maintenance hole.**
- 5.2 Where the assessments of Condition 5.1 have identified the need for improvements to the stormwater drainage system, the applicant shall liaise with MRC to effect these improvements at the applicant's expense.

### 6. INGROUND SWIMMING POOLS

Due to the special nature of and loads imposed by inground swimming pools, these structures shall not be built over or adjacent to the stormwater system as defined under section 1.4.

- 6.1 An inground swimming pool must be located clear of the stormwater drain's Zone of Influence unless the depth of the stormwater is greater than 2.5 m in which case the swimming pool must be offset a minimum of 2.5 m from the stormwater.
- 6.2 For stormwater drains greater than 225 mm in diameter, the application will be assessed on a case by case basis.

## **APPENDIX A**

### **Building over Stormwater Application Form**



## BUILDING OVER STORMWATER APPLICATION

*To be completed and returned to enable the issue of a Permit]*

1. Applicant's name:
2. Applicant's postal address:
3. Owner's name:
4. Owner's address:
5. Site address where work is to be carried out:
6. Property description where work is to be carried out:
7. ☐ New Dwelling ☐ Existing Dwelling ☐ Other
8. We hereby apply for permission to construct the following works: *[Detailed description of works to be carried out]*

**NOTE: The applicant recognises that there will be no refund on the application fee once the application has been receipted.**

Signature of Owner:

Date:

Signature of Applicant

Date:

### PRIVACY DISCLAIMER:

Mackay Regional Council is collecting your personal information in order to process your application. This information will only be disclosed to any other third party with your written authorisation or as we are required to by law.

### For Council Use Only:

Permit No: \_\_\_\_\_ Date Issued: \_\_\_\_\_ Initials: \_\_\_\_\_

Date Received: \_\_\_\_\_ Receipt No: \_\_\_\_\_ Amount Paid: \_\_\_\_\_

BOAS P/P: \_\_\_\_\_ Is application signed?: Yes / No

## THIS CHECKLIST MUST BE INCLUDED WITH:

### Building Over or Adjacent to Constructed Council Drainage Systems and Easements

The proposal will be assessed against MP1.4 of the Queensland Development Code (QDC), Local Law No.1, Subordinate Local Law No 1.1, Subordinate Local Law No. 4 and Mackay Regional Council "Conditions for Approval - Building Over or Adjacent to Constructed Council Drainage Systems and Easements".

NB: Approval of this application does not imply approval for requirements of any relevant planning scheme or any other

Section 1 – Proposal		
Type of Work		
<input type="checkbox"/> House or Addition to House	<input type="checkbox"/> Unroofed Pergola	
<input type="checkbox"/> Patio	<input type="checkbox"/> Deck	
<input type="checkbox"/> Carport	<input type="checkbox"/> Garage/Shed	
<input type="checkbox"/> Fence and/or Retaining Wall	<input type="checkbox"/> Other (state) .....	
Section 2 - Checklist		
	Yes	N/A
Completed IDAS application forms 1 and 2	<input type="checkbox"/>	
Correct application fee (refer to Section 3)	<input type="checkbox"/>	
Statement: A statement of justification which demonstrates that all fair and reasonable alternatives to building over or near sotrmwater infrastructure have been considered including relocation of the stormwater infrastructure	<input type="checkbox"/>	
Site Plan: Minimum scale 1:200 clearly showing: <ul style="list-style-type: none"> <li>The <u>entire</u> allotment accurately dimensioned showing all road frontages including the name of the road/s</li> <li>Location and nominated use of all proposed and existing buildings/structures on the allotment, accurately measured from the outermost projection to the property boundary's</li> <li>Driveways and vehicle access</li> <li>The north point</li> <li>The location of Council infrastructure (e.g. stormwater which accurately shows the depth and location of the existing infrastructure (including household connection point) in relation to the proposed works</li> <li>Any proposed retaining walls (setbacks and heights from natural ground level)</li> <li>Any proposed fill or excavation (amounts of fill and depths)</li> <li>Any easements on the land</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Elevation Plans: Minimum scale 1:100 clearly showing: <ul style="list-style-type: none"> <li>All building elevations and facades, clearly labelled to identify orientation (eg. South elevation)</li> <li>Heights measured from natural ground level (<u>must</u> include a <u>total</u> maximum height)</li> <li>Existing and proposed ground levels (where site is not level)</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
Footing Plans: <ul style="list-style-type: none"> <li>An engineer design of the proposal, certified by a Registered Professional Engineer of Queensland (RPEQ) in the civil category, demonstrating how the proposal will not adversely impact on the existing infrastructure. The engineering design should include a Critical Sectional View, show the accurate size and depth of the infrastructure and illustrate a "Safe Line of Excavation for Infrastructure Replacement". The following notation is to be clearly shown on the certified drawings:  <i>"This proposal will not interfere with, adversely impact or place an adverse loading on the relevant infrastructure."</i></li> </ul> NOTE: Standardised/generic footing plans are NOT acceptable, details must be site specific	<input type="checkbox"/>	
Mackay Regional Council reserves the right to request additional information, including but not limited to: <ul style="list-style-type: none"> <li>Pre and post build CCTV inspections accompanying reports of the service main affected by the proposal. The pre build inspection must be completed prior to approval of this application to ascertain the integrity of the existing sewerage infrastructure, the post build after completion of works to ensure no damage has occurred during construction. The CCTV survey and report must be carried out by Mackay Regional Council. All costs associated with the pre and post build CCTV inspections are to be borne by the property owner or applicant.</li> <li>Indemnity Deed Poll signed by the property owner in the presence of a witness over the age of 18 years.</li> </ul>	<input type="checkbox"/> <input type="checkbox"/>	

<b>Section 3 – Application Fee</b>			
Refer to Mackay Regional Council website <a href="#">fees and charges</a> (p36) for the prescribed fee. Method of payment can include cheque made payable to Mackay Regional Council, Credit Card or in cash, in person at any Mackay Regional Council Customer Service Centre.			
<b>Section 4 – Pre-lodgement</b>			
Assistance with this form or pre-lodgement enquiries can be obtained by calling Mackay Regional Council on 1300 MACKAY (622 529) or email <a href="mailto:council@mackay.qld.gov.au">council@mackay.qld.gov.au</a>			
<p style="text-align: center;"><b>PRIVACY DISCLAIMER</b></p> <p style="text-align: center;"><small>Mackay Regional Council is collecting your personal information in order to process your application. This information will only be disclosed to appropriate impartial third parties such as funeral directors and stone masons where appropriate, however under all other circumstances we require your written authorisation or as we are required to by law.</small></p>			
<b>CASHIER USE ONLY</b>			
Fee:	\$	Receipt No:	
Date:		Cashier:	

**PRIVACY DISCLAIMER**  
Mackay Regional Council is collecting this information in order to process the application. This information may be disclosed to the owner of the property, but will not be disclosed to any other third party without your written or verbal authorisation or except as required by law.



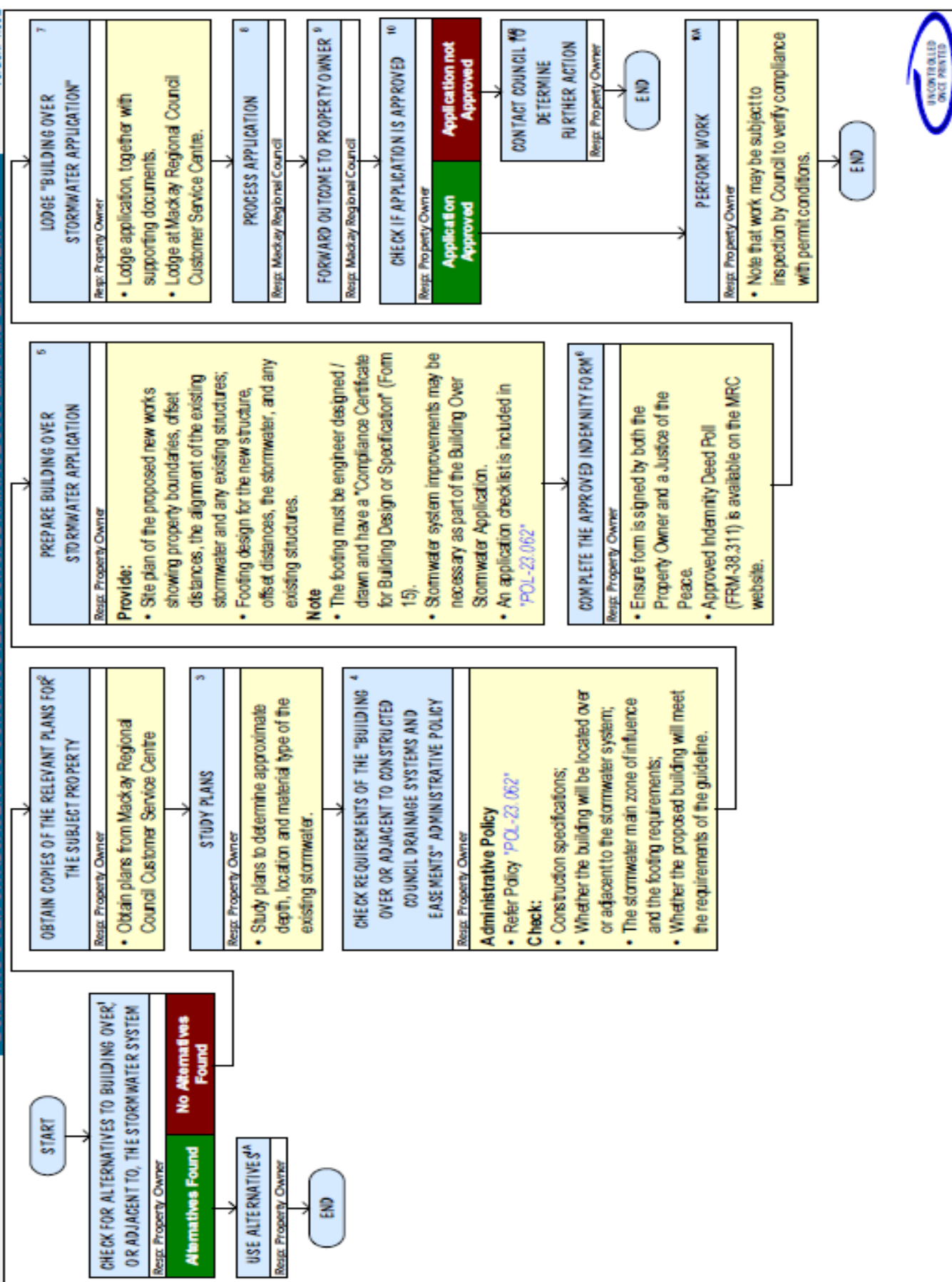
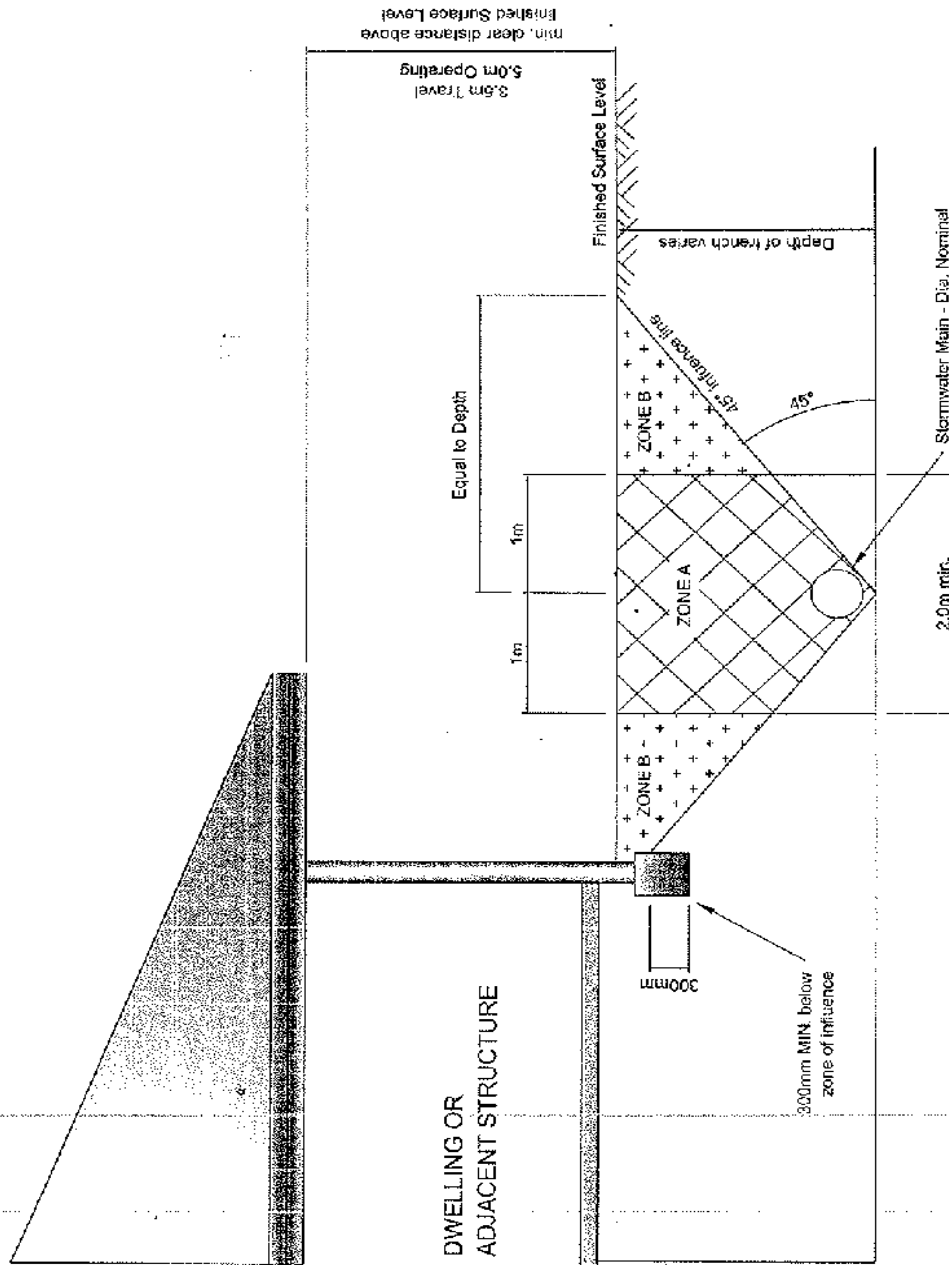


FIGURE 1



NO FOOTINGS PERMITTED IN ZONE A

		SHEET 1 OF 1			
		WORKS JOB No.			
		DRAWING No.		AMEND.	
		A3-3796		A	
		STANDARD			
		BUILDING OVER STORMWATER			
		EXCLUSION ZONE & DESIGN FOOTINGS			
					
		DIRECTOR, ENGINEERING SERVICES			
		APPROVAL SIGNED BY S.M. HOLLEY			
		STUART HOLLEY RPED 0940			
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FIGURE 2

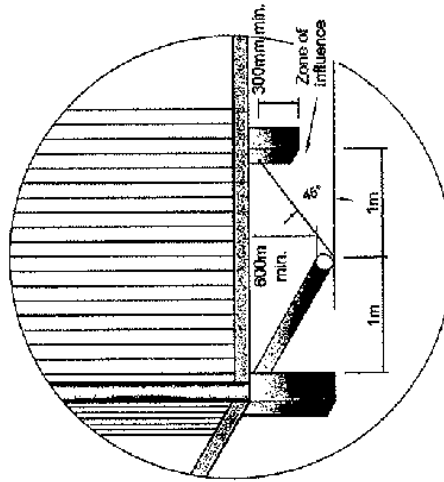
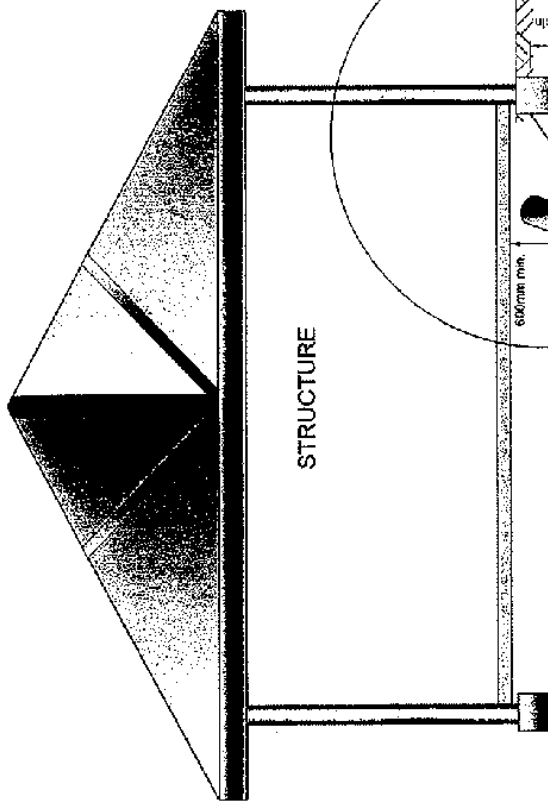


DIAGRAM C  
Traversing stormwater/stip  
footing pier and beam

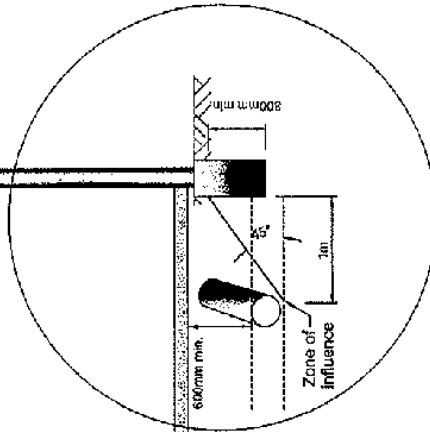


DIAGRAM A  
Parallel to stormwater  
under structure

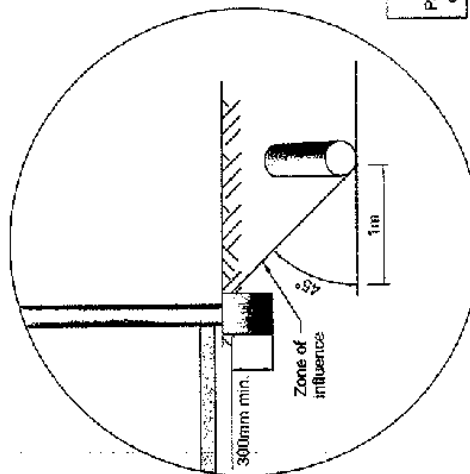


DIAGRAM B  
Parallel to stormwater  
external of structure

DRAWING FILE NAME  
1STD-DWGS\WORKS\A3-3796.DWG

NO.	DATE	DESCRIPTION	APPVD.
AMENDMENTS AND REVISIONS			

DESIGNED	12/12/07	M.A.S. G. Hawes
DRAWN		G. HAWES
CHECKED		REQ. 5683
DATE		

**MACKAY** CITY COUNCIL

EXECUTIVE MANAGER  
INFRASTRUCTURE SERVICES  
*S. M. HALL*  
STUART HOLEY  
19.11.07

PHONE (07) 4968 4477	PAX (07) 4944 2431

STANDARD  
BUILDING OVER STORMWATER  
EXCLUSION ZONE & DESIGN  
FOOTINGS

DRAWING No.	A3-3797
AMEND.	
SHEET 1 OF 1	



## **APPENDIX B**

### **REGISTERED STANDARD EASEMENT CONDITIONS (REGISTERED DEALING NO. 721379342)**

Title Reference [Title Reference]

This is the Schedule referred to in the Form 9 Easement

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this document unless the contrary intention appears:

**“Claims”** means actions, demands, losses, injuries damages, suits, judgements, injunctions, orders, decrees, costs and expenses of every description and includes without limitation, consequential losses and damage.

**“Grantee”** means the Mackay Regional Council.

**“Grantee’s Associates”** means the Grantee’s employees, contractors or other persons authorised by the Grantee.

**“Grantor”** means the party named in Item 1 of the Form 9 and its successors in title as registered owner of the Servient Tenement.

**“Servient Tenement”** means the land described in Item 2 of the Form 9.

**“Works”** means the Council’s works at any time constructed, in the course of construction or to be constructed wholly or partly upon, beneath or above the surface of the Servient Tenement determined by the Council to be necessary for or in connection with the purpose of the easement as well as works or structures for the protection and/or support of all such things AND where the purpose of the easement specified at Item 7 of the Form 9 contains the words –

**“Drainage”** – includes open earth drains, underground pipes or culverts for the purpose of conveying stormwater under or over the Servient Tenement together with all other usual necessary fittings and attachments AND levee, mains, earth fill embankments or other drainage to prevent and mitigate the effects of flood for the purpose of conveying stormwater and/or overland flow under or over the Servient Tenement;

**“Sewerage”** – includes pipes, mains or maintenance structures for the purpose of conveying sewage under or over the Servient Tenement together with all other usual and necessary fitting and attachments;

**“Access”** – includes a shared pathway;

**“Water Supply”** – includes mains and pipes, drains or cables for the passage or conveyance of water under or over the Servient Tenement together with all other usual necessary fittings and attachments.

**1.2 Headings**

The clause headings appear in this document are inserted for convenience of reference and shall not affect the construction of this document.

**1.3 Construction**

Reference to:

- (i) A clause or schedule is to a clause or schedule in this document;
- (ii) A person includes:
  - i. a corporation and governmental body; and
  - ii. the legal representative, successors and assigns of that person;
- (iii) a right includes a remedy, authority or power;
- (iv) a gender includes all genders;
- (v) the singular includes the plural and the plural includes the singular;

- (vi) any Act includes all amendments or substitutions for that Act and the Regulations made under that Act.

## **2. PURPOSE OF EASEMENT**

### **2.1 Drainage Easement**

Where the purpose of the easement specified at Item 7 of the Form 9 contains the word "Drainage" this **clause 2.1** applies.

The Grantor grants to the Grantee the full and free right of using the Servient Tenement or any part thereof for drainage purposes in perpetuity as follows:

- (i) At all times to receive and convey upon the Servient Tenement stormwater runoff and overland flow flowing continuously, intermittently or occasionally into, over and along the Servient Tenement from land adjoining the Servient Tenement and/or any other lands whatsoever by way of open drains, pipes or other artificial means; and
- (ii) To fill in the Servient Tenement or any part or parts thereof and to excavate therein and erect, construct and maintain above and below or partly above and partly below surface of the land open drains and/or pipes and all appurtenances thereof for the passage or conveyances of stormwater; and
- (iii) By itself or its officers, servants, agents, workmen with or without machinery, vehicles plant and materials to enter into and upon the Servient Tenement at all times for the purpose of removing and disposing of spoil, erecting, constructing, extending, deepening, widening, maintaining and repairing the said main and/or pipes and all appurtenance thereof and for the purpose of keeping the same in good order and condition and for all other lawful purposes incidental thereto; and
- (iv) The Grantor shall at all times have the right to divert the flow of the surface and/or roof water from the said land of the Grantor into the Servient Tenement and/or to any stormwater drain or pipe constructed now or to be constructed within the Servient Tenement, provided that an excavations, drains, channels or other works erected, constructed or executed by the Grantor on the Grantor's land is constructed or executed to the satisfaction of the Grantee.

### **2.2 Sewerage Easement**

Where the purpose of the easement specified at Item 7 of the Form 9 contains the word "Sewerage" this **clause 2.2** applies.

The Grantor grants to the Grantee the full and free right of using the Servient Tenement or any part thereof for sewerage purposes in perpetuity as follows:

- (v) At all times to receive and convey upon the Servient Tenement sewage flowing continuously, intermittently or occasionally into and along the Servient Tenement from land adjoining the Servient Tenement and/or any other lands whatsoever by way of pipes or other artificial means; and
- (vi) To fill in the Servient Tenement or any part or parts thereof and to excavate therein and erect, construct and maintain below surface of the pipes and /or a main and all appurtenances thereof for the passage or conveyances of sewage; and
- (vii) By itself or its officers, servants, agents, workmen with or without machinery, vehicles plant and materials to enter into and upon the Servient Tenement at all times for the purpose of removing and disposing of spoil, erecting, constructing, extending, deepening, widening, maintaining and repairing the said main and/or pipes and all appurtenance thereof and for the purpose of keeping the same in good order and condition and for all other lawful purposes incidental thereto.

### **2.3 Access Easement**

Where the purpose of the easement specified at Item 7 of the Form 9 contains the word "Access" this **clause 2.3** applies.

The Grantor grants to the Grantee the full and free right of using the Servient Tenement or any part thereof to enter upon and traverse the Servient Tenement and remain temporarily on the Servient Tenement, with or without vehicles, machinery and equipment and traverse along, over, upon and across the Servient Tenement for the purpose of accessing adjacent land and or park maintenance.

### **2.4 Water Supply Easement**

Where the purpose of the easement specified at Item 7 of the Form 9 contains the word "Water Supply" this **clause 2.4** applies.

The Grantor grants to the Grantee the full and free right of using the Servient Tenement or any part thereof for water supply purposes in perpetuity at all times to pump, receive and convey water under or over the surface of the Servient Tenement for the passage or conveyance of water.

### **3. RIGHTS AND OBLIGATIONS**

#### **3.1 Grantee's Rights**

3.1.1 The Grantee (and the Grantee's Associates) may at all reasonable times, upon giving prior written notice to the Grantor (except in the case of an emergency when no notice is required) with or without vehicles, machinery, plant and equipment and materials, to enter upon the Servient Tenement for the purposes of inspecting, servicing, using and maintaining the Works and in so doing may:

- (i) Construct and implement the Works (if applicable);
- (ii) Remove and replace the Works with new Works;
- (iii) Change the size and number of any pipes or culverts forming part of the Works;
- (iv) Extend, deepen, widen, repair, renew, mow, cleanse, add to, inspect and maintain the Works including altering, replacing, relaying or changing the size, shape or type;
- (v) Dig into, sink shafts into and open and break up the soil of the Servient Tenement;
- (vi) Remove and dispose of soil created as a consequence of the Grantee exercising its rights under this easement;
- (vii) Do such other Works and things on or under the Servient Tenement as are incidental to the exercise of the Grantee's rights under this easement, including erecting temporary fencing;
- (viii) Remove the Works whole or in part at any time; and
- (ix) Take down any fencing or structure erected on the Servient Tenement.

3.1.2 In exercising its rights under this easement the Grantee and the Grantee's Associates will subject to Clause 3.2:

- (i) exercise the rights in a proper and workmanlike manner so as to cause as little inconvenience and disruption as possible to the Servient Tenement and adjoining land;
- (ii) repair any damage it may cause to the surface of the Servient Tenement or adjoining land; and
- (iii) Use the Servient Tenement at the risk of the Grantee and not at the risk of the Grantor.

#### **3.2 Grantor's Obligations**

3.2.1 The Grantor shall maintain and keep the Servient Tenement in a reasonably neat and tidy condition at all times.

3.2.2 The Grantor must not without the prior written consent of the Grantee:

- (i) Construct or allow to be constructed upon the Servient Tenement any buildings or structures;
- (ii) Permit the Servient Tenement to be used in such a way as to obstruct or interfere with the Works and/or the proper and effective use of the Works by the Grantee;
- (iii) Install or have installed any permanent structures including but not limited to concrete or bitumen paths or driveways, gardens or landscaping using brick, concrete or other permanent materials;
- (iv) Alter the surface level of the Servient Tenement; and

- (v) Obstruct, interrupt, impede, impair, or interfere with or divert the flow of any drainage along the Servient Tenement and will not change or alter anything done by the Grantee in terms hereof.
- 3.2.3 If the Grantor wishes to construct upon the Servient Tenement any building or structure, the Grantor must provide the Grantee with detailed plans enabling the Grantee to consider the request and the Grantee may in its absolute discretion refuse such request.
- 3.2.4 If the Grantee consents to the construction of a building or structure upon the Servient Tenement, the Grantor:
  - (i) Will ensure that the building or structure is built in a proper and tradesmanlike manner in accordance with the plans submitted to the Grantee and will be maintained so as not to interfere with the Works;
  - (ii) Acknowledges and accepts that the building or structure will be built upon the Servient Tenement at the sole risk of the Grantor and will be used and occupied at the sole risk of the Grantor;
  - (iii) Acknowledges and accepts that it may be necessary for the Grantee to:
    - (a) Demolish the whole or part of the said building or structure;
    - (b) Carry out work under or upon the surface of the Servient Tenement which may have an adverse impact upon the said building or structure or interfere with the use and enjoyment of the said building or structure or the land;
  - (iv) Acknowledges and accepts that it cannot make any claim for compensation whatsoever arising from the Grantee exercising its rights under this easement or at law;
  - (v) The Grantee's consent to erection of the said building or structure on the Servient Tenement shall not be deemed in any way an assumption by the Grantee of any obligation towards the Grantor or to any person on the Servient Tenement and the Grantee shall not be thereby deemed to incur any liability; and
  - (vi) Indemnifies and will keep indemnified the Grantee against all actions, demands, claims, costs arising in any manner whatsoever from the construction, erection, use or occupation of the said building or structure upon the Servient Tenement.

#### **4. GENERAL PROVISIONS**

##### **4.1 Works in Property**

The Works remain the property of the Grantee despite being fixed to the Servient Tenement and the Grantee is solely responsible for the maintenance of the Works.

##### **4.2 Successors in Title**

The benefit and burden of the rights granted under this document shall pass with and bind the Servient Tenement so as it passes to and binds the Grantee and Grantor and their respective Successors in Title and is enforceable by and against the registered owners of the Servient Tenement.

##### **4.3 Joint and Several Liability**

In this document, an obligation incurred by two or more persons will be constructed as an obligation incurred jointly and severally by each such persons.

##### **4.4 Waiver and Exercise of Rights**

- (i) No variations or waiver of any provisions of this document will be of any effect unless it is in writing signed by the Grantor or (in the case of a waiver) by the party giving it.
- (ii) No failure or delay by a party in exercising any rights conferred by this document will operate as a waiver of that right.



- (iii) A single or partial exercise of waiver of a right relating to this document will not prevent any other exercise of that right or the exercise of any other rights.
- (iv) A party will not be liable for any loss, cost or expense of any party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise or a right.

#### **4.5 Severability**

If a provision contained in this document is invalid or unenforceable, that provision will, as far as possible, be read down to the extent necessary for it to be valid or enforceable but, if it cannot be read down, it will be severed from the document and the remaining provisions will remain in full force and effect.

#### **4.6 Land Titles Act**

For the purpose of Division 4 (Easements) of the *Land Title Act 1994*:

- (i) The Grantee is a public utility provider; and
- (ii) This document is granted for the purpose of a public utility service.

#### **4.7 Notices**

- (i) Any notice under this easement must be in writing; and
- (ii) Either party may serve a notice to the other party by:
  - (a) giving it to that party personally;
  - (b) posting it to the last known address of that party; or
  - (c) sending it to the party's email address.
- (iii) When served by post a Notice will be deemed to have been received on the third business day after posting and when served by email a Notice will be deemed to have been received if no electronic error notification is received by the sender, the date and time the email indicates it was sent.

#### **4.8 Costs**

The Grantor will pay any stamp duty, registration fees and the costs of the preparation of any survey plan necessary to effect registration of this easement.



## **APPENDIX C**

### **STANDARD INDEMNITY CONDITIONS**

# APPROVED INDEMNITY DEED POLL

\_\_\_\_\_(insert name/s) ("Owner")

\_\_\_\_\_(insert address) ("Property")

**Council ABN 56 24 721 069** of 73 Gordon Street, Mackay in the State of Queensland ("**Council**")

## RECITALS

- A. Council has relevant water, sewerage and/or drainage infrastructure located on or adjacent to the Property.
- B. The Owner intends to build the structure described in an application made to Council for consent dated on or about the date of this Deed (**Structure**).
- C. The Owner is required to obtain Council's consent to build the Structure on the Property.
- D. In consideration for Council granting its consent, the Owner has agreed to indemnify and cause future owners of the Property to indemnify Council on the terms of this Deed.

## THIS DEED PROVIDES:

### 1. INDEMNITY

- 1.1 The Owner is liable for and indemnifies Council from and against all liability, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against the Council) arising from or in connection with:
  - (a) the construction or maintenance of the Structure on the Property;
  - (b) the existence of the Structure on the Property; or
  - (c) the removal of the Structure from the Property.

### 2. COVENANT

- 2.1 Immediately prior to the sale or transfer of the Owner's interest in the Property, the Owner must:
  - (a) obtain from the purchaser/transferee an indemnity in favour of Council and a covenant in an identical form to this Deed; and
  - (b) deliver the purchaser/transferee's duly executed indemnity and covenant to Council.
- 2.2 Upon receipt by Council of the purchaser/transferee's duly executed indemnity, the Owner will be released and discharged from all liability in respect of this Deed.
- 2.3 If the Owner fails to comply with clause 2.1, the Owner will remain liable to Council under this Deed.

### 3. GOVERNING LAW AND JURISDICTION

- 3.1 The construction, performance and validity of this Deed shall in all respects be governed by the laws of Queensland.
- 3.2 The parties agree to submit to the exclusive jurisdiction of the courts situated in Queensland.
- 3.3 A reference in this document to the Owner includes the Owner's successors (including a mortgagee which takes possession of the Property), permitted substitutes and permitted assigns.

**EXECUTED** as a deed poll

**Signed, sealed and delivered** by the Owner/s in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Owner/s

---

Full name of Witness

---

Full name of Owner/s

Date: \_\_\_\_ / \_\_\_\_ /20

FRM-38.311 Approved Indemnity Deed Poll  
Electronic version current  
Version: 1.000 (14/07/21)  
Uncontrolled once printed



## **APPENDIX D**

### **TYPICAL FORM OF APPROVAL**



## Permit to Build Over and Adjacent to Council Drainage Systems and Easements

Local Government Act Chapter 13, Part 7, Division 2, S.956 E & F

Date of Issue:

Permit For:

Applicant's Details:

Name	
Postal Address	

Owner's Details:

Name	

Property Details:

Address	
Description	

The following conditions apply to this permit:

<u>Concurrency Agency Response</u>
<u>Concurrency Agency Advice</u>

**Note:**

- a. ***This permit is valid for two (2) years from the date of issue.***
- b. ***This approval does not imply that issues/requirements relating to planning and/or building legislation have been complied with. It is the applicant's responsibility to ensure that all relevant information pertaining to this permit is passed on to the building certifier for their records and information.***

Signature	
Name:	
Position	

MACKAY REGIONAL COUNCIL IS COLLECTING YOUR PERSONAL INFORMATION IN ORDER TO PROCESS YOUR APPLICATION. THIS INFORMATION WILL ONLY BE DISCLOSED TO ANY OTHER THIRD PARTY WITH YOUR WRITTEN AUTHORISATION OR AS WE ARE REQUIRED TO BY LAW.