

Title	Building Over or in Close Proximity To Council Stormwater Systems or Within Service Easements Policy
Council Resolution	Item 17 (19 Dec 2016) as per Council Minutes
Responsible Directorate	City Services & Infrastructure
Due for Review	Four (4) years from Council Resolution Date
Strategic Plan Reference	<u>Leading our Community</u> 4.2 Manage our resources to achieve community outcomes
ECM	Council Policy

PURPOSE

This policy clarifies the requirements and responsibility for assessment and granting consent for building work over or within one (1) metre of a Council stormwater system or within a service easement.

SCOPE

This policy applies to property owners proposing to carry out building work on certain class 1 to 10 structures situated over or within 1 metre of a Council stormwater system or within a service easement.

STATUTORY REQUIREMENTS

Acts	<i>Urban Drainage Act 2013</i> <i>Building Act 2016</i> <i>Land Use Planning and Approvals Act 1993</i> <i>Occupational Licensing Act 2005</i> <i>Occupational Licensing Amendment Act 2016</i>
Regulations	Not applicable

DEFINITIONS

Applicant	an owner or an agent of the owner making any type of application before Council that may affect Council's stormwater system
Building	includes a proposed building, part of a building, a structure and part of a structure
Class 1 or 10	a building classified as being of Class 1 to 10 as defined in the National Construction Code Volume 2
Class 2 to 9	a building classified as being of Class 2 to 9 as defined in the National Construction Code Volume 1
Coordinator Building and Plumbing Services	a person appointed as the Coordinator Building and Plumbing Services by the Glenorchy City Council
Council stormwater system	has the same meaning as a <i>public stormwater system</i> under the <i>Urban Drainage Act 2013</i>
Development Engineer	a person appointed as the Development Engineer by the Glenorchy City Council

Hydraulics Engineer	a person appointed as the Hydraulics Engineer by the Glenorchy City Council
Owner	has the meaning given in the Building Act 2016
Service easement	land the subject of an easement reserved for the installation and maintenance of services including water, drainage, electricity, gas and telecommunications.
Structural engineer	a person who holds a current “Building Services Provider” license as a structural engineer (Civil) under the Occupational Licensing Act 2005

POLICY STATEMENT

1. This policy must be read in conjunction with Section 73 and 74 of the *Building Act 2016*, and Section 13 of the *Urban Drainage Act 2013*.
2. Subject to obtaining advice from the Development Engineer, Hydraulics Engineer or Coordinator Building and Plumbing Services, the General Manager may give consent in accordance with Section 13 of the *Urban Drainage Act 2013* and sections 73 or 74 of the *Building Act 2016* (with or without conditions) for the erection or extension of a Class 2 to 9 building or structure and certain Class 1 and 10 buildings and structures (set out in paragraph 3, below) to be constructed over or within (1) metre of a Council stormwater system or within a service easement if:
 - a) there is no other reasonable alternative other than to build over a Council stormwater system or within a service easement
 - b) the existence of the Council stormwater system would otherwise impose a substantial impediment to the effective development of a substantial portion of the lot
 - c) a certified structural design of the footing system and access panel arrangement in the floor is submitted by a structural engineer and is approved by Council’s Development Engineer or Hydraulics Engineer
 - d) a CCTV inspection of Council’s stormwater system has been undertaken at the applicant’s expense as directed by Council’s Development Engineer or Hydraulics Engineer
 - e) the Development Engineer and Hydraulics Engineer are satisfied that the certified design provides satisfactory access to, and protection of, Council’s stormwater system or a service easement and minimises the potential for future liability claims against Council. The certified design may need to include details for removal of the parts of the building over or within 1 metre of a Council stormwater system or within a service easement
 - f) the owner enters into a Part 5 Agreement under the provisions of the *Land Use Planning and Approvals Act 1993* in a form similar to that included in Appendix A¹. Any such agreement must provide that the owner or future owners of the subject property cannot hold the Council liable for any damage or inconvenience arising from the erection or extension of a building or structure, or for any effort including associated costs necessary to provide Council unrestricted access to the Council stormwater system for repair, replacement, upgrade, extension or maintenance purposes. Council may require the owner to pay to Council any additional costs incurred in relation to the repair, replacement, upgrade, extension or maintenance of the stormwater system due to the granting of consent to erect or extend a building or structure over or within 1 metre of Councils stormwater system or within a service easement; and
 - g) sufficient merit based on the above and other matters is clearly demonstrated and accepted as such by Council’s Coordinator Building and Plumbing Services.
3. Consent may be provided only for the construction or erection of the following Class 1², 10a, 10b and 10c buildings or structures over or within 1 metre of an existing Council stormwater system or within a service easement: carports, garages, sheds, decks, fences, masts, antennas, free standing walls or the like.

4. To avoid any doubt, the General Manager's consent will not be given under this policy for the construction of the following buildings or structures over or within 1 metre of an existing Council stormwater system or within a service easement:
 - a) A class 1 building which is a dwelling (other than a part of a dwelling which, if built on its own would be a class 10 building), or
 - b) a class 10b structure which is a swimming pool, whether above or below ground.
5. The General Manager may (on the advice of Council's Hydraulics Engineer or Coordinator Building and Plumbing Services) exercise a discretion to give consent under Clause 3 where the Council stormwater system is situated below a proposed Class 2-9, Class 1³, Class 10a, Class 10c and certain Class 10b structures or buildings where structural loads are not transferred to Council's stormwater system or associated trench. In such cases the Development Engineer, Hydraulics Engineer or Coordinator Building and Plumbing Services may require the applicant to provide details of a footing design showing the building footing, as a minimum, to be below the invert depth of the Council stormwater system. Design details may also be required to demonstrate how removal of the parts of a building designed to be built over or within 1 metre of a Council stormwater system or within a service easement can be undertaken to allow for access to the same.
6. The applicant is responsible for ensuring that Council's stormwater system and service easements are accurately located, horizontally and vertically, on plans provided with an application seeking consent to build over or within 1 metre of a Council stormwater system or within a service easement. If there is any doubt relating to the location or depth of the Council stormwater system for any type of application before Council, the applicant may apply to the General Manager for Council to locate the system. Costs associated with this or any other investigation with respect to Council's stormwater system's condition or location will be borne by the applicant.
7. This policy applies irrespective of whether the Council stormwater system is (or is not) located within an identified service easement.
8. When implementing the provisions of this policy, the following legislative provisions must be taken into account:
 - a) Sections 73 and 74 of the *Building Act 2016*;
 - b) Section 13 of the *Urban Drainage Act 2013*;
 - c) Section 90AB of the *Conveyancing and Law of Property Act 1884*;
 - d) Schedule 8 of the *Conveyancing and Law of Property Act 1884*; and
 - e) Part 5 of the *Land Use Planning and Approvals Act 1993*.

BACKGROUND

In considering applications involving the construction of buildings (including structures and placement or removal of filling) situated over Council stormwater systems or within one metre laterally from the outer edge of Council's stormwater systems or within service easements, Council must:

- (a) ensure protection of Council's stormwater system or service easement;
- (b) ensure that ready and timely access by Council can be gained to Council stormwater systems or service easements so repair, replacement, upgrade, extension or maintenance works can be carried out;
- (c) ensure the dead and live loads of a building are not transferred onto Council stormwater systems;
- (d) minimise the number of building failures that are reported to Council;

- (e) provide a consistent application of provisions contained within the *Building Act 2016*; *Land Use Planning and Approvals Act 1993*; and the *Urban Drainage Act 2013*; and
- (f) minimise conflict and uncertainty for future owners on the use of the land over and within one metre of Council's stormwater systems or within service easements.

A concise policy is required to ensure the above objectives are achieved.

Endnotes

- ¹ The attached 'Part 5 Agreement' is an example only and conditions may be varied to reflect site specific requirements to provide protection a Council stormwater system or service easement
- ² Class 1 buildings are included in this Policy only due to the Building Code of Australia (BCA) including parts of buildings that would normally be considered class 10 buildings or structures being attached to the class 1 building under the provision for multiple classification. Only parts of Class 1 buildings that would, if constructed on their own, be class 10 buildings will be permitted.
- ³ See note 2, above.

- incurred or increased by reason of the building being erected over the said stormwater system or within 1 metre of the said Council stormwater system or within the said service easement;
- c) To indemnify the Council against all claims, costs and expenses arising out of any damage caused to the building as the result of the failure of or the repair, maintenance and/or reconstruction of the said stormwater system whether such damage is caused by the negligence of the Council or agents or otherwise; and
 - d) To advise any successor in title of the existence of this Agreement and its terms and conditions.
 - e) To pay to the Council the costs of any additional works, or costs associated with any particular method of construction necessary in the repair, maintenance, replacement, extension or upgrading of a stormwater system or within 1 metre of a Council stormwater system or within a service easement.
2. The owner acknowledges that this Agreement is to be registered by the Recorder of Titles pursuant to Section 78 of the *Land Use Planning and Approvals Act 1993* and undertakes to pay the Council any costs of such registration.

IN WITNESS whereof the parties have hereunto set their hands and seals the day any year first hereinbefore written.

**THE COMMON SEAL OF
GLENORCHY CITY COUNCIL**
was hereunto affixed in the presence of:

.....
General Manager

.....
Alderman/Mayor

SIGNED, SEALED AND DELIVERED
by the said.....
in the presence of: