



3 June 2020

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Sunshine Coast Council  
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Sunshine Coast Mail Centre QLD 4560

**BY POST/EMAIL – [mail@sunshinecoast.qld.gov.au](mailto:mail@sunshinecoast.qld.gov.au)**

Dear Mr Bunker,

**RE: Easements to Facilitate Water and Sewer Infrastructure**

The Urban Development Institute of Australia Queensland Sunshine Coast branch (the Institute) writes to you in relation to the need to create Unitywater easements over Sunshine Coast Council (council) owned parks or lots dedicated for other public uses, to facilitate water and sewer mains. We note that this has been an on-going matter that many of our members have cited as an impediment to the efficient and affordable delivery of new housing in the region.

As you would be aware, Unitywater is the water distributor for the Noosa, Sunshine Coast, and Moreton Bay regions and the assessment authority for water and sewer infrastructure and connections. As part of our Sunshine Coast and Moreton Bay branch policy program, we have established an on-going working group with Unitywater aimed to allow for both parties to discuss items pertinent to the property industry, to seek resolution and improve outcomes for all parties.

Unitywater easements over council owned Freehold land for the purposes of open space has been an on-going agenda item and we seek to resolve this issue with council's property services team. There are two main issues our members have raised:

- the need to provide a Unitywater easement for water and sewer infrastructure/connections
- the length of time taken to process and obtain final approval to grant the easement.

These matters are discussed below.

We acknowledge that local government may have concerns about granting access to their assets, however, the Institute considers that these can be addressed. In this regard, please refer to the technical assessment of issues and concerns prepared by members of the Governance sub-committee attached.

### **Requiring an easement over water and sewer infrastructure/connections**

The Institute understands that Unitywater can exercise adequate access and restoration provisions within their relevant legislative framework and does not require an easement dedication. For this reason, the Institute views that requiring an easement over existing or new water and sewer infrastructure/connections may not be necessary. As a result, we seek clarification on the council's approach on easements.

Further, we highlight that there is a substantial proportion of water and sewer Infrastructure already sitting within private and public land without the benefit of easements or presumably any issues arising. This situation appears to have worked satisfactorily to date. Easements appear to only be put in place when new works and development raise the opportunity for an easement to be imposed.

The requirement for easements is a particular concern where only a small connection to an existing pipe in an open space area is required.

We recommend that council considers no longer requiring an easement in open space for water and sewer infrastructure.

### **Timing and process to obtain consent and registration of an easement**

The process to obtain an easement over Unitywater's asset over council owned land for the purposes of open and greenspace can be a lengthy and cumbersome process, reducing efficiency and affordability in delivering new housing on the Sunshine Coast.

The time required to undertake the process can be more than six months and so adds substantially to the costs of providing housing and ultimately adds to the affordability concerns with new homes for the community. In particular, the process generally occurs near the end of the development stage, at a time of peak project expenditure and interest costs. The length of time to obtain a 'certificate of completion' and, subsequently approved plan sealing (typically for developments permits under Reconfiguring of a lot approvals) can be considerable.

We note that the process in providing a report for compliance relating to 'Disposal of an Interest', where it has to undergo full council meeting and approval, can be another lengthy process. The Institute considers that this process can be vastly improved. One option to seek better efficiency would be delegating a decision for 'Disposal of an Interest' to an officer level.

We recommend that council work with our members to develop improved arrangements between council and Unitywater to explore measures to reduce delays in endorsing plan sealing application.

## Conclusion

The Institute seeks removal of the requirement for the dedication of the easement to accommodate water and sewer infrastructure/connections where possible. Also, that the costs and delays in the process of obtaining the grant of an easement are substantially reduced.

Thank you for considering our points raised in this submission. Additionally, we thank council for your on-going development assessment forums with the industry. The Institute appreciates our relationship and collaboration toward improved customer service to achieve better outcomes for the delivery liveable communities.

We look forward to discussing these issues in more detail. If you have any questions, please contact Policy Executive, Robert Tily ([rtily@udiaqld.com.au](mailto:rtily@udiaqld.com.au)) on (07) 3229 1589.

Yours sincerely,

**Urban Development Institute of Australia Queensland**



Graeme Bews

**Chair of the Governance Sub-Committee - Sunshine Coast Branch**

CC:

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### **Summary of Issues and Consultation - Unity Water Easements in Park**

UDIA Queensland members have raised concern regarding the need for Unitywater Easements in Council owned Parks, or Lots set aside for other Public purpose uses (i.e. Drainage, Open Space Community Purposes, Environmental etc.). In particular, it relates to those lots which are Freehold and are owned either outright by council or with council as the Trustee.

The two key issues that UDIA Queensland members have identified are:

#### **Issue 1 - Is there a need to provide Unity Water Easements (i.e For Sewerage)?**

During regular working group Unitywater / UDIA Queensland meetings, Unitywater has indicated that it does not require easements over their Sewer & Water Assets. Unity Water has advised that there are adequate Access & Restoration provisions within the existing legislative frameworks to not require easements.

It is understood that Unity Water has liaised with both Moreton Bay Regional Council and Sunshine Coast Council Property Departments regarding the matter. It is understood that council has provided feedback to Unity Water noting its desire to require easements in park.

The Institute makes the following observations regarding whether easements are necessary to protect council's interests:

- a) It is unlikely that council would sell or otherwise dispose of park or drainage reserve lot, where there may be a need to identify an encumbrance on the title and protect the asset. If such a situation were to arise, creation of the easement could occur prior to the settlement.
- b) Easements are not an exclusive right to the land over which they occupy, and do not restrict the typical purpose and use of the park. Furthermore, regardless of the presence of an easement, before undertaking construction work, it is best practice to undertake "Dial Before Your Dig" searches to determine if any underground assets may be impacted by construction.
- c) The asset owner (Unity Water) is comfortable with not having an easement. This is unusual as it is normally the beneficiary of these Easements that insists on their creation.
- d) Any new sewer or water works within council owned land are typically preceded by a council Consent Works Agreement, so it is not likely that Unity Water would start constructing infrastructure in additional locations without council's consent.
- e) There is a substantial proportion of sewer infrastructure sitting within private and public land without the benefit of easements. Easements are only insisted upon when new works, connections and development raise the opportunity for an easement to be imposed. It appears that the current situation is operating satisfactorily without easements.

#### **Issue 2 - Lengthy process to gain council's approval of an easement**

The issue arises in the situation where a park already exists, and where (for example) a sewer connection is required to existing sewer infrastructure within the park. In this example, where the sewer alignment is not covered by an easement, consent is required for the works and consent is also required for the registration of an easement.

The resultant concerns are:

- The timeframe it takes to obtain consent and sign off to the easement;

- The resultant delay in obtaining Unity Water's "On Maintenance" and certificate of completion which is a pre-requisite to obtaining Plan Sealing Approval for a Subdivision Plan from council.

Below is an example of the time cost involved with obtaining an easement in park:

1. Request to Council Property Department for the an easement over a new sewer line through Park – 3 months to obtain a response to the easement request.
2. A Report is required for Compliance with Local Government Regulations 2012 (Section 236(2)) relating to a Disposal of an Interest. This is required to go to the Full Council for Approval and takes an additional 3 months.
3. A Valuation is then undertaken and compensation is payable to Council for the Easement before Final Sign Off.

As indicated above, it takes around six months to obtain a fairly simple consideration and sign off on an easement Document, which is similar to the timeframe to obtain approval some development applications.

It is understood that Council's Property section considers that the creation of an easement is a "disposal of an interest in land" which is subject to Section 236 of the Local Government Regulation 2012. Section 236 contains the requirements for a local government to dispose of an interest in land.

The Institute would like to explore with council whether the consent to an easement can be a delegated decision, rather than a matter to be considered by full Council. In this regard, the Institute would appreciate if council could investigate whether creation of an easement is in fact a disposal of an interest, given that an easement is not an exclusive right to use the land. Any legal opinion that council has obtained on the matter may assist our collective understanding of the process constraints and opportunities.

We reiterate that the Institute's key aim in raising this matter is to investigate pathways to shorten the time to obtain council consent for an easement.