



Guideline

Guideline title:	Building Over Council Easement Guideline
Governing policy (ref no):	C/POL/101
Guideline owner:	Manager Infrastructure Assets
Approved by:	Manager Infrastructure Assets
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(Guidelines are non mandatory advisory documents used to provide additional guidance/help in relation to a policy or procedure eg that may relate to legislation or funding agreements. For further information refer to Section 8 of the Policy Handbook and Appendix 3 for the approval process.)

Guideline intent

Council has adopted a policy to provide a decision making framework for Officers to determine what structures are appropriate to be built over Council easements or underground assets. This guideline supports the application of this Policy and provides guidance for the placing of conditions where approvals may be granted.

Proposals will be assessed on a case by case basis, as not all aspects can be covered.

Scope

As per the Victorian Building Regulation 2006 Section 310.1, consent from Council is required to position a structure within an easement vested in Council or within 1m of an underground asset.

Council restricts and controls the construction of structures and other items over easements or drainage assets because doing so can:

- lead to difficulties with maintenance, replacement or upgrade works by restricting access and working space
- expose Council and current or future property owners to excessive costs, liabilities and risks whereby structures or items may require removal/replacement, stabilising structures or more expensive and time consuming techniques to be adopted during renewal, upgrades or maintenance works
- compromise the integrity of the Council stormwater system or the surrounding structures and items due to construction works, asset failure or subsidence

Guideline statement

Consent

Consent to build over an easement is likely to be granted for combined works, structures, items valued at less than \$4000 (in 2015), provided the submitted plans show works are not going to damage existing pipes, block overland flow paths or severely restrict use of the easement for existing or future Council assets.

Council reserves the right to remove and not replace structures or items on the easement whether or not consent has been given. Other than basic reinstatement, Council will not be liable for any excessive time or replacement costs or liabilities due to consent being granted. Items in this category include:

- concrete slab, paving, asphalt or gravel bed up to 100mm thick e.g. driveway, path or support a minor shed,
- a brick fence and associated footing perpendicular to easement provided no load is transferred to Council's drain or a future drain with sufficient clearances allowed for the pipe,
- most removable light-weight minor structures e.g. simple decking structures, minor removable water features, wooden fences or gates crossing or parallel,
- most removable above ground Spa's or Rain Water Tanks (3 cubic meters or less) provided it can be removed and any full loading is not transferred to Council's drain e.g. a structural platform may be required,
- most simple pool surrounds (not part of the pool structure) or pool fences,
- Removable sheds or stand-alone outbuildings less than 10 square meters, generally on a minor gravel or concrete base up to 100mm e.g. a garden shed,
- Eaves overhang of up to 600mm, with a minimum height of 2.5m above ground level.

Consent subject to conditions (Section 173 agreements)

Consent to build over an easement with an associated Section 173 agreement is likely to be granted for combined works, structures and items with \$4000 or above in estimated value (in 2015), provided the submitted plans show works are not going to damage existing pipes, block overland flow paths or severely restrict use of the easement for existing or future Council assets. Items in this category include:

- an open carport
- a workshop, outbuilding or shed generally greater than 10 square meters e.g. colourbond shed
- most major structures – pergolas, verandas, decking areas, outdoor entertaining areas, large water features, removable spas, major masonry walls, in-built BBQs or ovens (when existing pipe is less than 450mm diameter)
- significant above ground structural or landscaping retaining walls
- most special surface courts (e.g. tennis) and associated items such as fencing & lighting
- significant pool surround with any fixtures, fittings, storage or pool/pump equipment

Refusal of consent (non-permissible structures)

Consent to build over an easement will not be granted generally for habitable dwellings or where works restrict the use of the area. Where combined works, structures and items have greater than \$50,000 in estimated value (in 2015), the liability and risk to both Council and future owners is considered unacceptable. Items in this category include:

- an apartment, industrial or commercial building
- a house or any part of a habitable dwelling
- a pool (both above-ground and in-ground)
- structure under the same roof line as the habitable dwelling
- structure containing sewer fixtures or significant pipe works
- any building or structure (particularly lockable ones) preventing access to a stormwater access pit
- most structural or landscaping retaining walls greater than 1m high
- most cuttings and excavations cannot be accepted due to physical interference with assets or cover requirements to the underground pipe
- below ground structures such as a Rain Water Tank, grated pit or below ground trampoline
- enclosed brick (or similar) garage, workshop or enclosed carport
- most major structures – workshop, outbuilding, sheds, spas, verandas, outdoor entertaining areas (when replacement of existing 450mm pipes and greater is required by larger construction equipment)

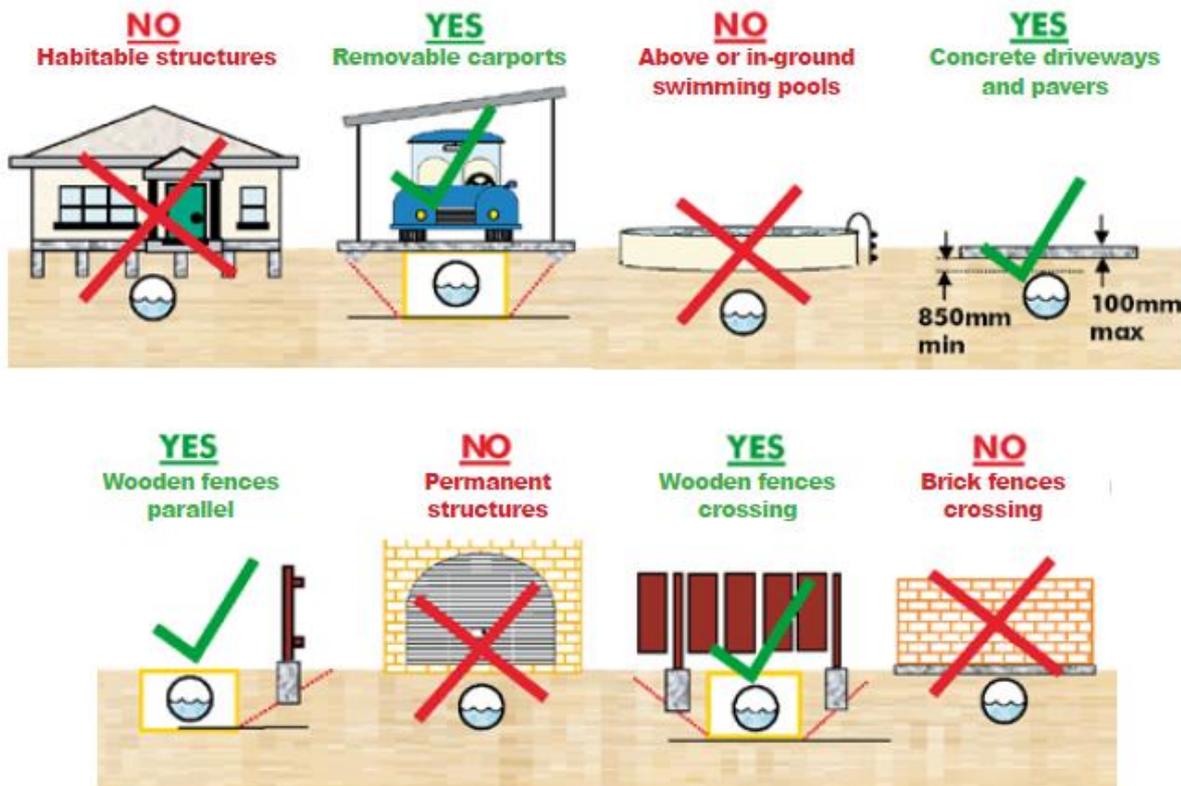


No application required

All structures or works over an easement require a build over easement approval form to be submitted with drawings. Items that require no applications include:

- grassed areas, minor plantings or garden beds with surround up to 200mm high
- easily removable minor pavers or paths up to 100mm thick
- easily removed light-weight or temporary items with low weight bearing e.g. removable trampoline or BBQ
- an existing timber paling or picket property fence being replaced (any footings must continue missing Council assets)
- plantings, however, Council DOES NOT encourage placing of certain vegetation particularly large trees or those with intrusive root systems over easements or near Council assets. Roots size and growth for tree stability or those in search of water may cause damage to drains or cause blockages.

Under Section 149 of the Water Act 1989 and Council's Local Laws if the Authority reasonably decides that the tree is obstructing or damaging the authority's works or is likely to, Council can require its removal. The owner may be responsible for the costs and the authority is not liable to pay compensation for the removal of the tree.



Source: Melbourne Water

Frequently Asked Questions

[What is an easement?](#)

An easement is a defined area of land registered on a land title that gives Council, or other authorities, access rights through your property. Typically Council use these rights for the maintenance, installation, replacement or upgrades of essential drainage infrastructure.

What is an implied easement?

It is not uncommon to have a Council stormwater drain, another authority's sewer asset or a private drain in a property not supported by a registered or recorded easement. Despite this, when a Council drain is not supported by a formal easement in favour of Council - because it performs a public function - is vested in and under the management and control of Council pursuant to section 198 of the Local Government Act 1989.

These are often referred to as implied easements and need to go through the same formal consent process under the same conditions as a build over easement if the owners are intending to build any structures or items laterally within 1 metre of the asset. To construct a building over a Council drain, you must first obtain a report and consent from Council.

What is build over easement?

Build over easement is when a property owner plans to build a structure or item near on or above an easement or drain controlled by Council. You must get consent from Council to build over an easement or asset that is vested in Council.

Council may –

- (a) refuse consent; or
- (b) consent (Council maintains its rights of access to ensure it is able to fulfil its statutory obligations relating to installation, replacement, upgrade or maintenance of assets. Giving consent does not remove these rights); or
- (c) consent subject to conditions (a Section 173 agreement of the Planning and Environment Act being lodged on title prior to construction)

Other Authorities and parties may also have rights over the easement. If so you must also get consent from each of these interested parties. Title documents, Dial Before You Dig, Council or other sewer and water authorities may help disclose their interest.

What is a Section 173 agreement?

Under the Planning and Environment Act 1987 under Section 173 a Council may enter into an agreement with an owner of land. This is a legal agreement that defines conditions, liabilities and obligations; it is registered with the certificate of title and is binding for both current and future owners of the property.

Who prepares a Section 173 agreement?

Typically Solicitors nominated by Council will prepare the Section 173 Agreement after the following has occurred:

- an application has been made and Council advises a Section 173 Agreement is required;
- the property owner agrees to all conditions included in the agreement
- the applicant pays for the cost of preparing and registering the agreement on title

This cost is paid to the solicitor directly and can be expensive (costs can vary but estimates are often around \$1000). The process can often be lengthy and often out of Council's control (estimates are eight to twelve weeks, subject to variations).

Can I start the works while the Section 173 agreement is being prepared?

No, you can only start the specific works over the easement or Council asset once the Section 173 agreement has been lodged on the title at the Land Registry with a dealing number. A copy of the signed agreement is supplied to Council and the Owner.

A staged permit may be issued for other works unrelated to the Section 173 or easement area.



What is required when applying for a build over easement?

- A completed Council Build Over Easement application form and payment.
- Legible copy of property title, including easement classification.
- Obtain written consent from all statutory Authorities and parties that have rights over the easement (this may include Melbourne Water, South East Water or neighbouring properties)
- Council requires plans and cross sections showing:
 - two (2) dimensioned drawings showing the structure(s) type and their footings, proposed to be constructed, and its/their position relative to the easement/drain.
 - Precise footing details of the proposed structure.
 - Slab poured and reinforced independently of the footings.
 - Footings of the proposed structure parallel to the easement must be:
 1. founded at a minimum of 1.2 metres below the natural surface; or
 2. 100mm below invert of any existing drain or meet the angle of repose for a minimum trench width 150mm horizontally from and 150mm deeper than an existing drain
 - All concrete footings constructed shall not impinge on the easement, more than 450mm from any title boundary.
 - A 300mm clearance must be present from any drainage assets.

What if the easement is clear and I want it expunged or I want to divert the pipe and easement?

This would no longer be a build over easement application. It can be assessed through an application to create, vary or remove an easement other than a right of way (the cost of this application in 2015 is \$404).

It is not always possible to remove an easement. Unused easements may provide overland flow paths or be required for future use. Diversions may not have alternative options or work hydraulically, all costs go to the developer which can be prohibitive (it is more likely to be considered for large developments).

Related documents

Policies	Building Over Council Easement Policy
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Definitions & Abbreviations

Term	Meaning
Easement	An easement is a right held by someone to use land belonging to someone else for a specific purpose. Common examples of easements re drainage, sewerage and carriageway easements.

Please note: This guideline is current as at the date of approval. Refer to Council's website (www.bayside.vic.gov.au) or staff intranet to ensure this is the latest version.

