

Council Policy

Council policy title:	Building Over Council Easement Policy 2018
Council policy owner:	Director Environment, Recreation & Infrastructure
Adopted by:	Bayside City Council
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1. Policy intent

This Policy controls how property owners use private land that is encumbered by an easement, or within proximity of underground assets without impeding Council and other Service Authorities rights over on the affected land.

2. Policy purpose

The purpose of this Policy is to ensure prospective owners of the land are aware of the specific conditions with regard to Council rights to access the easement if and when required to carry out necessary activities; and to protect Council against incurring any cost due to removal of a structure over an easement.

3. Glossary - Definitions and 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 are drainage, sewerage, and carriageway easements.
Implied Easement	An easement which is not recorded on title, but considered to exist around a built council asset. Implied easements arise from Common Law.
Carport	A shelter for a car usually consisting of a roof built out from the side of a building and supported by posts. It cannot be lockable, or have 3 or more open sides, but may allow for adjacent property fence(s) or building(s).
Section 173 agreement	A legal agreement under Section 173 of the Planning and Environment Act 1987, between the land owner and Council. Registered on the land title to ensure all future owners are aware of and bound by the requirements.

4. Scope

This policy governs decision making for structures within easements vested in Council or within 1m of existing Council underground assets. Consideration shall be given to the potential need for future service provision within easements that are currently not used.

5. Policy statement

In most instances, easement restrictions are placed on a parcel of land at the time of subdivision to facilitate provision of services by Council and service authorities. The landowner has use of the land surface as long as such use does not interfere with service provision and operational requirements of service authorities. In some cases an 'implied easement' may exist where there is a physical council asset on private land, but no easement created at time of subdivision.

The following conditions will be considered in addition to the policy objectives.

- i. All easements will be subject to the provisions of this policy, irrespective of whether any services exist in the easement or not,
- ii. If no potential for use of easement is apparent permission may be granted for the easement to be discontinued. An assessment will be made by relevant authorities on the potential for future service provision at the site,
- iii. No habitable or permanent structure will be approved including enclosed garages or enclosed carports,
- iv. No in-ground or above-ground swimming pools will be approved,
- v. Council may require the applicant to enter into a section 173 agreement of the Planning and Environmental Act 1987 and applicant to pay to Council all charges associated with the preparation and registration of the section 173 agreement,
- vi. Special requirements for building or structure foundations so that there is no detrimental impact on the existing or future service assets will be enforced,
- vii. Council will not permit construction over easement, if the easement contains stormwater drain that is 425mm or greater in diameter,
- viii. There may be special requirements for paved surfaces to provide Council access for on-going management of assets within easement,
- ix. Minor structures such as garden sheds, pergolas, decking, driveways and fencing will be considered favourably in most instances.

6. Monitoring, evaluation & review

As there is tendency toward greater area within private property to be used for permanent structures, Council must address the risk associated with accessing and servicing existing assets or being able to construct new assets should they be deemed necessary in the future.

Evaluation and review through Council maintenance, upgrade and renewal works in easements as well as customer feedback will indicate the effectiveness of the policy.

This Policy should be reviewed every four years

7. Roles & Responsibilities

The Manager City Assets and Projects is responsible to consent or refuse an application from a landowner constructing a building or structure over an area of land on which Council has

easement rights as per Certificate of Title or acquired rights as per section 187A of Local Government Act 1989 regarding the location of public infrastructure.

8. Related documents

Legislation	Building Act 1993 Building Regulations 2006 Local Government Act 1989 Planning and Environment Act 1987 Subdivision Act 1988
Policies	Service Driven Asset Management Policy 2014
Strategies/Plans	Asset Management Improvement Strategy 2013
Procedures/Processes	Application to Build Over Easement

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