



Build Over Easement Policy

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Authorisation	Council 30 May 2022
Review date	June 2026
Responsible officer	Manager Engineering Services
Policy owner	Design & Infrastructure Coordinator

1. Purpose

To meet our obligations in the Building Act 1993 and the Building Regulations 2018 and to provide a basis upon which Council will consider applications for the construction of buildings, works and any other structures over Council's easement.

2. Scope

This policy applies to all applications to build over an easement.

3. Definitions

Word/Term	Definition
Easement	An area of land registered on the certificate of title around services. The organisations who maintain these services have the right to control how the land in the defined area is used.
Section 173 Agreement	An agreement between the property owner and Council recorded on the certificate of title.
Council's drain	Stormwater pipes owned and maintained by Council.

4. Policy

4.1 Non-Permissible Structure

Council will not permit the following in any easement whatsoever: -

- Any part of a habitable dwelling,
- Any structure under the same roofline as the habitable dwelling,
- In ground swimming pools,
- Structures containing sewerage fixtures within the easement,
- Industrial buildings,
- Any structure over or within 1m of a stormwater access pit, and
- Strip footings.

4.2 Permissible Structures

Council's assessment of build over easement applications for permissible structures depends upon two main factors. What is in the easement and is the proposed structure major or minor.

4.3 Easement Use

Where a Council underground drain does not exist at the time of application, Council will assess the future need for Council or another authority or a property owner to use the easement. If the easement is deemed to be required for future use the application will be assessed as normal.

If the easement is deemed to be of no future use any of the major and minor structures will be approved under the standard build over easement agreement.

4.4 Build Over Easement Agreements

An agreement between Council and the property owner is entered into upon the consent to build over an easement. This can be a standard build over easement agreement or a Section 173 agreement that records the same agreement onto the property title.

For 'minor works and structures' as defined below the owner is required to enter into a standard Build Over Easement Agreement.

For 'major works and structures' the owner is required to enter into a Section 173 Agreement with the Council that contains appropriate terms and conditions that ensures the ongoing protection of Council's interests and assets in an easement. Where a Section 173 Agreement is required the owner is to bear all costs for drafting the agreement and for registering the agreement on title. Minor and major structures are categorised as below.

4.4.1 Minor

- Timber fence,
- Brick fence perpendicular to easement provided no load is transferred to Council's drain,
- Internal Services – i.e. down pipes, sewer pipes,
- Stand alone outbuildings of light weight materials and steel frame with a floor area of less than 27 square metres such as a steel shed,
- Cut or Fill – minimum 400mm cover to top of pipe,
- A simple open carport i.e. with a flat steel roof, flat frame and steel or timber posts
- Simple timber decking structure on timber stumps,
- Eaves where there is a minimum height from ground level of 2.2m,
- Rain water tank (not concrete) provided that load is not transferred to Council's drain i.e. must be on a structural platform,
- Minor retaining walls i.e. not requiring a building permit only where it is unavoidable and the full impact on the affect on the Council drain is determined,
- Paving, concrete or asphalt for pedestrians and vehicles, and
- Pool surrounds provide it is not part of the pool structure.
- Shipping container provided no load is transferred to Councils drain.

4.4.2 Major (Requiring a Section 173 Agreement)

- Brick garages, sheds or outbuildings,
- Stand alone outbuildings of light weight materials and steel frame with a floor area of greater than 27 square metres such as a steel shed. Where the bay of a steel shed over the easement can be easily removed this structure will be considered a minor structure (refer Appendix A).

- Major timber structures that don't fall within the minor category.

4.5 Construction Conditions

Major and minor structures must all comply with the following requirements and will be reviewed as part of the application process.

- Any proposed buildings, works or structures are designed and constructed in a manner which protects the structural integrity of the drain i.e. no loads transferred to the drain. This may require deeper footings than structurally required to satisfy the angle of repose, and
- Any part of the building, structure (including footings) or works is kept at least 300 mm clear of the underground drain.

4.6 Dispute Resolution

Section 144 of the Building Act allows an appeal to be made against Council to the Building Appeals Board. An appeal can be made for: -

- Refusal to consent to an application,
- Conditions imposed, and
- Failure within a reasonable time to decide an application.

Appeals must be made within 30 days of the date that the refusal is issued.

Further appeal information can be found at www.vba.vic.gov.au

5. Responsibility /Accountability

5.1	Technical Officer, Design Engineer, Design & Infrastructure Coordinator, Manager
	<ul style="list-style-type: none"> • Responsible for the provision of professional advice to public, employees and authorised delegates regarding this policy.

6. References and links to legislation and other documents

Name	Location
<i>Building Act</i> 1993 Building Regulations 2006	www.legislation.vic.gov.au
Guide to Build over Easements (2010)	Melton City Council website www.melton.vic.gov.au

Appendix A - Major and Minor Sheds

