

# Building Over Easement Guidelines

## Purpose

The purpose of these Building Over Easement guidelines is to assist the community and the Council in the sustainable management of both vested and implied easements set aside for Council assets recognising the needs of both the landowner and the current and future needs of the wider community.

## Scope

The scope of these guidelines is to protect the landowner's right to use the land with an easement without impeding Council's or/and other service authorities' rights to use the easement.

An easement is a section of a property reserved for the installation of services, such as stormwater drains, sewers, and other utility services. The Certificate of Title for each property will indicate the location of an easement, its size and who has the rights to use the easement.

Where services exist or will be needed in the future, the easement should be kept clear of buildings, structures, and works for maintenance, construction, and access. Some easements are provided to allow for overland stormwater flows during large storm events.

It may be permissible to construct certain buildings, structures or works on or over an easement subject to certain conditions if such use does not interfere with the service provision and operational requirements of the service authorities with rights to that easement.

Any easement that has been created for drainage purposes requires the Council's approval to be built over before works commence. Where an easement is shown to be a drainage and sewerage easement, separate approvals are required from the Council and the local sewer/water authority.

Easements may also be created in favour of other service authorities, and these will be shown on the Certificate of Title. Applications and advice must be sorted from each authority having rights over an easement before works commence. While other service authorities may provide their advice, the Council's decision is independent of and not influenced by this other advice.

Section 130 of the Building Regulations 2018 states that "The report and consent of the relevant service authority must be obtained to an application for building permit to construct a building over an easement vested in that authority." If the works are approved, the letter of approval will contain additional conditions that must be met.

These guidelines apply to all easements within the City of Monash where the Council has the right to use the easement.

## Vision

The City of Monash will aim to provide drainage assets that support the provision of best-value services to the community. The Council assets need to be accessible, maintained, upgraded, renewed, constructed and suitable for community use. These guidelines will ensure that Council's rights to undertake these activities in easements are maintained by balancing the competing social, environmental, and economic needs for the benefit of current and future generations.

## Objectives

The Council's Building Over Easement approval process will be guided by the following core objectives:

- To provide a consistent and equitable approach to assessing applications from landowners to construct a building, structure or works over an easement set aside for the Council's purposes.
- To ensure that a viable alternative location for the proposed building, structure or works is not available on the site before processing.
- To ensure that approval for Building Over Easement has been obtained from all service authorities and parties that have rights over the easement before processing.
- To provide and protect the Council's ability to access, maintain, construct, and improve assets within an easement when required.
- To ensure that the building, structure or works will not jeopardise an existing Council drain in the easement or an abutting property easement.
- To ensure that the Council does not incur any cost associated with a building, structure or works over an easement.
- To ensure that the building, structure, or works do not affect the capacity of overland flows likely to occur along or over the easement during major storm events.
- To guide new landowners about specific conditions regarding the Council's rights to access easements.
- To ensure the Council's interests will be protected by way of formal agreements binding current and future landowners.
- To ensure the building, structure or works conform to the Building Code of Australia, where applicable.

## Related Documents

The **Council Plan 2021-2025** guides Council's overall strategic direction. It provides four Strategic Objectives for Council including the following which relate to asset management (drains):

- **Sustainable City** (Ensure economically, socially, and environmentally sustainable municipality.)
- **Inclusive Services** (Renew our community assets to deliver contemporary service.)

This is driven by a commitment to progressive governance and strong leadership.

In addition, the following external documents relate to these guidelines:

- Building Act 1993
- Building Regulations 2018
- Local Government Act 1989
- Planning and Environment Act 1987
- Subdivision Act 1988

## Delegation

The Chief Executive Officer has sub-delegated the authority to the following positions to give or to deny consent to applications from landowners to construct a building, structure or works over an area of land on which Council has easement rights as per the Certificate of Title as per Section 187A of the Local Government Act 1989:

- Director City Development
- Manager Engineering
- Principal Development Engineer
- Senior Development Engineer
- Senior Strategic Development Engineer
- Senior Administration Engineer

## Guideline Non-Compliance

Failure to comply with these guidelines is likely to result in an increased risk of:

- Council drains becoming damaged by illegal or inappropriate construction being undertaken over easements, which may cause damage to neighbouring properties during storm events.
- Access to maintain, upgrade, renew, or construct drainage assets becoming impracticable or overly expensive.
- Overland flows being blocked or diverted causes damage during major storm events.
- Unsafe assets.
- Infrastructure that is not fit for purpose.
- Assets with excessive ongoing operational costs.
- Service disruption.

## Implementation of these Guidelines

The following will be considered when assessing applications for Use of Easement under these guidelines:

- All easements will be subject to the provisions of these guidelines, irrespective of whether Council assets exist in the easement or not.
- If there is no potential for the Council to use the easement, permission may be granted for the expungement of the easement through the formal Planning process.
- The cost of applications to Building Over Easements will be covered by the applicant including, where necessary, the cost of registration fees associated with the lodgement of section 173 agreements.
- Specific requirements for the building, structure or works concerning the application to ensure assets or future assets are protected from external forces.

Table 1 indicates the current Council requirements for Building Over Easement application assessments.

Table 1 – Building Over Easements Application Assessment

Building Over Easement type	Proposed Construction, Structure or Works
<p style="text-align: center;"><b>No Requirement</b></p>	<p>The following do not require Building Over Easement approval:</p> <ul style="list-style-type: none"> <li>• paving less than 10 m<sup>2</sup> constructed on a sand base.</li> <li>• crushed rock pathways.</li> <li>• steppingstones.</li> <li>• clotheslines.</li> <li>• timber boundary fences.</li> </ul>
<p style="text-align: center;"><b>Building Over Easement (eaves only)</b></p>	<p>The following will require an Eaves Only – Building Over Easement:</p> <ul style="list-style-type: none"> <li>• Building eaves &lt;= 450 mm wide and 2.5 m high from finished surface levels</li> </ul>
<p style="text-align: center;"><b>Minor Building Over Easement</b></p>	<p>The following will require a Minor Building Over Easement when constructed over an easement:</p> <ul style="list-style-type: none"> <li>• service pipes including residential drains</li> <li>• hot water systems</li> <li>• simple masts, poles, aerials, antennas</li> <li>• solid/brick fences</li> <li>• retaining walls</li> <li>• sheds with a floor area of less than 10 m<sup>2</sup></li> <li>• driveways</li> <li>• paving greater than 10 m<sup>2</sup> constructed on a sand base</li> <li>• cut/fill depending on extent (see Major also)</li> <li>• landscaping</li> <li>• water tanks on a structural platform</li> <li>• garages/carports where no drain exists (see Major also)</li> <li>• car parks (see Major also)</li> <li>• pergolas, verandas &amp; gazebos (see Major also)</li> <li>• decking (see Major also)</li> <li>• eaves &gt; 450 mm wide.</li> </ul>

<p style="text-align: center;"><b>Major Building Over Easement</b></p>	<p>The following will require a Major Building Over Easement when constructed over an easement with a Council drain of less than or equal to 375 mm in diameter or where a Council drain is likely to be constructed in the future:</p> <ul style="list-style-type: none"> <li>• garages/carports</li> <li>• car parks</li> <li>• sheds with a floor area greater than 10 m<sup>2</sup></li> <li>• commercial buildings (subject to assessment)</li> <li>• workshops</li> <li>• studios</li> <li>• pergolas, verandahs &amp; gazebos</li> <li>• decking</li> <li>• shade sails</li> <li>• cut/fill depending on the extent</li> </ul>
<p style="text-align: center;"><b>Not Permitted</b></p>	<p>The following is not permitted on the easement:</p> <ul style="list-style-type: none"> <li>• any portion of a dwelling</li> <li>• swimming pools</li> <li>• saunas</li> <li>• spas</li> <li>• anything within 1 metres of the edge of a Council drainage pit</li> <li>• anything on a Council drain greater than 375 mm in diameter</li> <li>• service meters or infrastructure.</li> </ul>

Any other proposal not listed above will be assessed independently.

## Specific Requirements

In approving an application for a Building Over Easement several specific conditions may be applied to the approval to protect the rights of the Council and its assets. These conditions may be applied to any application. The most common conditions are listed below, but not limited to the following:

- Replacement or upgrade of Council assets including drains
- Materials to be used
- Weight of building, structure or works
- Construction type
- Construction joints
- Offsets
- The angle of repose
- Depth, location and type of footings
- CCTV of a drain within the easement

## Cost of Works

All works associated with this Building Over Easement approval is at the owner's expense. Council will not contribute to the cost of private development works.

## Requests for Review

Where an applicant requests a review of a Council officer's decision, the applicant is to make a written request to the Director of City Development or the Manager of Engineering for a review of the decision outlining the reasons for the request including the nature of any special circumstances. If to accept the proposed works, there is a need for a minor deviation from these guidelines, the Director of City Planning or the Manager of Engineering may approve such a deviation. The Council reserves its right to uphold its original decision.

## Definitions

### Angle of Repose

The angle of repose is the angle of the slope that indicates how a structure will be loaded below ground. All structures constructed within the angle of repose of the existing drain will be forcing pressure on the underground assets. This angle is related to the density, surface area, and coefficient of friction of the surrounding soil. However, the angle of repose is usually considered to be at a 45° angle.

### Asset

Any Service Authority infrastructure installed within or on an easement.

### Building, Structure or Works

Anything proposed works on or within an easement that directly impacts the ability of Service Authorities to use the easement.

### Building Over Easement

The formal process required to obtain a Report and Consent of the service authority under Section 130 of the Building Regulations 2018.

### Certificate of Title

The Certificate of Title is a person's record of interests and rights affecting their land. It is issued by the Registrar of Titles to the person entitled to its possession, usually the registered proprietor, mortgagee or chargee.

The Certificate of Title shows the date the certificate was created, plus all registrations and recordings made in the Register at the time. This includes the name(s) of registered proprietor(s), easements, and other interests such as mortgages, covenants, and caveats.

### Council

This includes the City of Monash or its predecessors the former City of Waverley and the former City of Oakleigh. In some instances, the Certificate of Title may reference a drainage easement for lots on a plan of subdivision. Where this occurs The City Monash has drainage rights to the easement.

### Council Drain

An underground drainage pipe constructed or to be constructed by Council within an easement to provide for stormwater drainage or an overland flow path to allow for the flow of stormwater, not within the underground drainage system.



## Easement

An easement is a section of a property as shown on the Certificate of Title that is reserved for the installation of services or to allow for overland flow.

## Formal Agreement

A legal binding agreement signed by both, and an authorised officer of the City of Monash and all landowners shown on the Certificate of Title.

## Implied Easement

An area of land containing an existing asset but has not been marked as an easement on the Certificate of Title. Any works over the implied easement shall be considered the same as an easement on the Certificate of Title.

## Landowner

The person, persons or entity listed as owners on the Certificate of Title.

## Major Building Over Easement

A Report and Consent issued by the City of Monash allows the landowner to undertake substantial works within an easement, which requires a formal Section 173 Agreement to be signed by the Council and the landowner and be registered on the Certificate of Title.

## Minor Building Over Easement

A Report and Consent issued by the City of Monash allows the landowner to undertake minor works with an easement, which requires a formal agreement being signed by the Council and the landowner.

## Overland Flow

This is stormwater that does not enter the underground stormwater system but flows overland through properties and road reserves during major storm events.

## Report and Consent

This is the formal process under Section 130 Building Regulations 2018 to allow for a building, structure or works to be built over or with an easement.

## Rights

The rights whether formal or informal of service authorities to install, replace, upgrade, protect and maintain their assets from time to time.

## Section 173 Agreement

A formal binding agreement signed by the City of Monash and the landowner and registered on the Certificate of Title under the Planning and Environment Act 1987.

## Service Authority

As defined by Regulation 130 of the Building Regulations 2018 – a Council; a drainage authority; the relevant electricity supply authority; the relevant gas supply authority; a sewerage authority; a water supply authority that provides services within the City of Monash.

## Services

Services may include but are not limited to, stormwater drainage, sewers, water supply, electricity supply, gas supply, electricity supply and telecommunications.

## Stormwater Pit

A stormwater pit is a chamber with or without a removable cover that allows access to the underground drainage assets.

## Offset

The offset is the distance from the outside of an asset within the easement to the nearest building, structure or works.