



Build Over Easement Policy

Version 1.0
January 2013

TABLE OF CONTENTS

1	Introduction	1
2	Organisational context.....	1
3	Definitions	1
4	Policy objectives	2
4.1	<i>Asset protection.....</i>	<i>2</i>
4.2	<i>Access.....</i>	<i>2</i>
4.3	<i>Future stormwater drainage works</i>	<i>2</i>
5	Application process	2
6	Assessment criteria	3
6.1	<i>Application assessment.....</i>	<i>3</i>
6.2	<i>Overland flow.....</i>	<i>3</i>
6.3	<i>Existing drainage infrastructure</i>	<i>4</i>
6.4	<i>Eaves</i>	<i>4</i>
6.5	<i>Vacant easement.....</i>	<i>4</i>
6.6	<i>Permanent structures</i>	<i>5</i>
6.7	<i>Expunging easement</i>	<i>5</i>
6.8	<i>Carriageway easements</i>	<i>5</i>
6.9	<i>Vegetation</i>	<i>5</i>
6.10	<i>Objection of Council decision and conditions.....</i>	<i>5</i>
6.11	<i>Closed circuit television (CCTV).....</i>	<i>6</i>
7	Standard conditions of consent.....	6
8	Relevant Act and Regulation	6

1 Introduction

This policy provides guidelines for the report and consent process for works proposed over or within easements vested in Council. It is designed to provide clear, consistent, fair and efficient guidelines for these types of works. The aim of this policy is to clearly describe factors considered during the approval process.

The policy is designed to assist members of Council staff and the community in the administration of Regulation 310 of the Building Regulations 2006 and Regulation 148 of the Water Act 1989. These regulations require the consent of Council to be obtained to undertake works within an easement vested in Council.

2 Organisational context

The policy aligns with Council's vision to create a sustainable and well-managed natural and built environment.

This policy is directly supportive of Council's mission to ensure resources are managed in a responsible and accountable way.

The values of Council most relevant to this policy are:

Respect - We value our community and each other.

Integrity - We will be honest, open and fair in everything we do.

Accountability - We take responsibility for our actions.

Innovation - We will work with each other and the community to achieve our goals.

3 Definitions

Minor works

- A carport or pergola consisting of a frame and roof. The carport or pergola must be open at sides perpendicular to the easement.
- A small removable tool shed.
- House eaves overhanging where eaves are a minimum 2.4 metres above the finished ground level.
- Service pipes.
- Hot water system.
- Rain water tank equal to or less than 10,000 litres. Council may limit the number of tanks within the easement on one property.
- Clothes hoist rotary or fixed to wall.
- Residential air conditioning.

- Service meters.
- Simple masts, poles, aerials, antennas.
- Timber fences.
- Paving for pedestrians and vehicles.
- Retaining walls not requiring a building permit.
- Earth filling only where the strength of the Council drain allows.
- Earth excavation where a minimum cover of 400mm to the top of the pipe is maintained or 200mm where there is no pipe.
- Decks, provided no footings are located within the easement and the portion of the deck over the easement can be removed without detriment to the remainder of the structure.

Permanent structures

- Garage.
- Any part of a dwelling.
- Below ground and above ground swimming pool.
- Retaining walls requiring a building permit.
- Large shed.
- Other structures deemed permanent by Council.
- Water tank larger than 10,000 litres.

4 Policy objectives

4.1 Asset protection

Reduce the possibility of structural failure of any Council assets within an easement due to increased loads as a result of building works and installed structures.

4.2 Access

Ensure Council officers, employees or agents have uninterrupted access to the easement at all times for the purpose of construction or maintenance of Council assets.

4.3 Future stormwater drainage works

Ensure proposed works will not prevent the use of the easement for future construction of stormwater drainage infrastructure.

5 Application process

Prior to works commencing above or within an easement vested in Council, the applicant (i.e. the owner or the owner's agent) must lodge with Council's Infrastructure Development department a formal application for a dispensation for the works. The dispensation application must include the completed application form, a site plan showing the extent of the proposed works, a copy of other authorities consent which the easement is vested in (if available) and payment of the associated non-refundable fee.

Upon receipt of the dispensation application a Council officer will commence the assessment process. The following are the tasks to be undertaken during the assessment process:

The responsible Council officer will make a decision on whether or not an on-site assessment of the application is required. The applicant may request an on-site assessment if required.

If further information is required to adequately assess the application the Council officer is to contact the applicant to obtain this information. A site visit may be required.

The Council officer will assess the application based on the criteria outlined in Section 6.

The applicant will be advised of the decision via letter.

Please note the normal application processing time is 10-15 working days. Consent is valid for the lifetime of the structure.

6 Assessment criteria

6.1 Application assessment

Applications will be assessed in accordance with Section 5 of this policy. All policy objectives will be considered during the assessment of applications triggered both through dispensation applications and developments in the form of a planning permit.

6.2 Overland flow

Where an easement contains an above ground drainage facility (i.e. swale, concrete lined open drain, etc) or where Council believes that the easement is required by Council or Melbourne Water for the constructing of works to control overland flow, Council will only consider the construction of Minor Works that will not impede, interfere or redirect flows.

Where works will impede, interfere with or redirect flow, Council will only consider Minor Works if the applicant agrees to bear the costs of:

- undergrounding the drainage in accordance with the provisions of this policy and to Council's standards and satisfaction;
- the preparation of engineering drawings to Council's satisfaction;
- checking and supervision of the works by Council officers;
- paying appropriate fees for plan checking and supervision.

6.3 Existing drainage infrastructure

Where an existing Council underground drain or private drain exists within the easement Council will only consider the construction of Minor Works where the following conditions are met:

- Any building or structure is a minimum of 2.0 metres clear of Council's drainage pits.
- Any building, structure or works do not interfere with property (house) drain connections.
- That any proposed buildings, works or structures are designed and constructed in a manner which protects the structural integrity of the drain e.g. no loads transferred to the drain.
- Excavations, parts of the structure (including footings) are kept at least 500 mm (horizontal) clear of the underground drain.
- Any other applicable conditions e.g. the applicant bearing the cost of relocating a property house drain connection.

6.4 Eaves

Where the application is for eaves overhang or installation of underground property services in connection with building construction, Council will consider the construction provided that:

- they do not limit Council's ability to maintain existing infrastructure or to provided new infrastructure;
- eaves are to be typically a minimum of 2.40 metres above natural ground level where underground drainage currently exists or may be required;
- the effects of the extension of the eaves into the easement is to be assessed by Council.

6.5 Vacant easement

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, by considering, but not limited to, the following:

- the natural fall of the land generally around the property;
- the extent of Council drainage in the area;
- the extent of private drainage approved by Council;

- the scope for development or further development of the property and adjacent properties.

Where Council declares the easement is not required, the applicant will be required to expunge the easement (see section 6.7) if the works proposed are other than Minor Works.

6.6 Permanent structures

Council does not allow the construction of Permanent Structures over or within easements which contain underground or overland drainage. Refer to section 6.2 and 6.3.

Council may allow the construction of permanent structures over or within a vacant easement. Refer to Section 6.5.

6.7 Expunging easement

If the Manager of Infrastructure Development deems there to be no apparent use for the easement, Council may request the applicant expunge the easement from the title for the allotment. Where an easement is to be expunged the applicant will bear all costs associated with formalising the change.

6.8 Carriageway easements

Consent will not be granted for applications to construct works within a carriageway easement. Separate application will need to be made to Council's planning department to amend the alignment of the carriageway easement if achievable.

6.9 Vegetation

Vegetation with aggressive root structures must not be planted within an easement. High canopy trees must be avoided and the use of groundcovers and shrubs is encouraged. No vegetation is to be planted within two metres of a Council pit. Property owners are responsible for damage to Council drainage infrastructure resulting from planted vegetation.

6.10 Objection of Council decision and conditions

An owner / or their agent has rights of appeal to the Building Appeals Board (within 30 days) – including any:

- requirement of a reporting authority to give more information or amend a permit application (s138);
- building permit conditions or refusal of a permit (s138) + 149 (3A);
- Council report determination or discretion (s144).

6.11 Closed circuit television (CCTV)

Council may request the applicant to monitor the condition of any existing underground drainage, where it is the opinion of the Manager of Infrastructure Development that the drain is of a deteriorating age or works have been approved which deviate from the specific requirements of this policy.

7 Standard conditions of consent

The following are standard conditions for consent to build over or within an easement vested in Council for Minor Structures:

- The ground level over the easement must not be altered.
- Footing structures associated with any Minor Works and other approved structures must be set below a line drawn at 45 degrees from the invert of the Council drain.
- Council shall have the right to enter into and upon the land and/or easement for the purpose of inspecting, maintaining, repairing or replacing the existing Council drain.
- The owner being solely responsible for all damage which may be caused by the encroachment by reason of or incidental to the carrying out of the inspection, maintenance, repair or replacement of the existing Council drain.
- The owner not selling this property without first disclosing the contents of this consent to the purchaser.

These conditions along with other case specific conditions will form the consent agreement administered by Council.

8 Relevant Act and Regulation

The following are the relevant act and regulation relevant to this policy:

- Building Act 1993
- Building Regulations 2006