

# Guidelines for Building Over Easement

---

Infrastructure Management Department

July 2018

Next Revision: July 2019

---

# Table of Contents

<b>1. Guidelines intent.....</b>	<b>3</b>
<b>2. Scope.....</b>	<b>3</b>
<b>3. Guidelines statement.....</b>	<b>3</b>
1.1. Consent.....	3
1.2. Refusal of consent (non-permissible structures) .....	4
<b>4. Frequently Asked Questions .....</b>	<b>4</b>
What is an easement?.....	4
What is an implied easement? .....	5
What is build over easement? .....	5
How do I apply to build over an easement and how long does it take? .....	5
What are the applicable fees involved to build over an easement?.....	6
What is required to be submitted when applying for a build over easement? .....	6
What conditions are possible when consent is granted? .....	6
What if the easement is clear and I want it expunged or I want to divert the pipe and easement? .....	7
<b>5. How can I apply? .....</b>	<b>7</b>
<b>6. Related documents.....</b>	<b>7</b>
<b>7. Definitions &amp; abbreviations.....</b>	<b>7</b>
<b>8. More Information .....</b>	<b>8</b>
<b>9. Contact Us.....</b>	<b>8</b>

---

## 1. Guidelines intent

These guidelines have been prepared to provide a decision making framework for Officers to determine what structures are appropriate to be built over Council easements or underground assets. The guideline 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.

## 2. Scope

As per Regulation 130 of the Victorian Building Regulations 2018, consent from Council is required to position a structure within a drainage easement registered on title and vested in Council.

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.

## 3. Guidelines statement

### 1.1. CONSENT

Consent to build over an easement is likely to be granted, 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. A detailed plan of the proposed structure including footing details must be submitted for approval of any structure.

In general the following works will require a Build over Easement application:

- Garage / Shed
- Car Port
- Swimming Pool Safety Fencing
- Verandah / Pergola
- Deck
- Fence
- Eaves
- Balcony
- Steps/Stairs
- Changes in ground level

- 
- Retaining Walls

## 1.2. REFUSAL OF CONSENT (NON-PERMISSIBLE STRUCTURES)

Consent to build over an easement will not be granted generally for habitable dwellings and/or Class 1 Buildings and where the proposed works are deemed to be a liability and risk to both Council and future owners is considered unacceptable.

In general Council **does not** allow the following to be built over an easement:

- Habitable Rooms or Class 1 Building
- Basements
- Swimming Pool/Spa
- Sheds & Garages over 9.0m in length
- Underground Car Stacker
- Underground Rainwater Tank
- Rainwater Tank greater than 3kL in size
- Structures to be built over an easement containing a Council stormwater pipe greater than 450mm in diameter.

## 4. Frequently Asked Questions

### What is an easement?

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

Other common examples of easements on properties are sewerage and carriageway easements.

Easements are generally shown on the copy of title and may be at the rear of a property or down the side of the property. The easements may contain a Council and/or Melbourne Water drain and/or a South East Water sewer main or electricity supply/gas main or they may be empty and reserved for a future drain or sewer or power/gas supply.

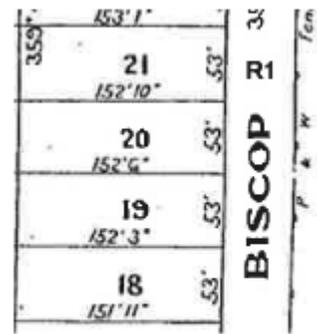
Sometimes building over these easements is not permitted because access to the buried pipes may be required for maintenance or renewal.

As an easement is shown on the property title you will not be able to find out from the title if there are any physical assets located in your easement. One way to find out if any assets are present in the easement is to lodge a **dial before you dig** inquiry by calling 1100 or submitting an online application at <https://www.1100.com.au/>



1. Example of a copy of title plan showing 10' / 3.05m wide drainage & sewerage easement at the rear of Lots 28-39 Ashlar Road.

Important Note: Title



2. Example of copy of title with no registered easements on the properties shown (Lots 18-21 Biscop Road)

### 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.

### What is build over easement?

Build over easement is when a property owner plans to build a structure on an easement vested in 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.

### How do I apply to build over an easement and how long does it take?

Where an application is necessary you must complete an Application for Report and Consent, Regulation 130 – Building Over an Easement along with attachments required as per the checklist and payment of the application fee by submitting to [info@kingston.vic.gov.au](mailto:info@kingston.vic.gov.au) or lodgement in person at City of Kingston Cheltenham Offices.

The assessment timeframe for Build over easement application is generally up to 14 business days. The actual processing time is subject to the complexity of the application. Please note the application fee is not refundable if approval is denied.

Build over Easement consents are only valid for 12 months from the issue date.

---

### What are the applicable fees involved to build over an easement?

The current fee to build over easement (Regulation 130 – Building over an Easement) is \$283.35 per application, up until 30 June 2019, which is subject to change on an annual basis.

Please note that applications that have a Council Stormwater Drain in the easement may be subject to additional fees as the condition of the asset may need to be checked prior to and upon completion of the works by CCTV monitoring the drain. This task would be arranged by Council but paid by the applicant. Depending on the condition of Council's asset any maintenance works that may be required in order to sustain the proposed build over structure would also need to be carried out by Council prior to the commencement of any works if approval was granted.

CCTV monitoring and investigations can be in the order of \$1,000 subject to the complexity of the situation and is subject to annual price increases by the companies that undertake these works.

### What is required to be submitted when applying for a build over easement?

- A completed Report and Consent Application Form for Building over an Easement.
- Report and Consent Fee.
- Covering letter (briefly explaining why the concession is being requested & description of proposed works).
- Two Sets of Proposed Building Plans (Site Plan Floor Plan & Elevations)
  - One set is for Council records and the other set is for the Owner once the plans are endorsed. Plans must include a Site Plan (1:200) showing north point, all boundaries, adjoining properties, public space (footpath, road, lane, park area etc), setbacks and buildings where concerned, easements, Australian height datum points, Flood contours, existing buildings & proposed works are to be clearly defined and; Building Plans (1:100), Elevations, Sections, (inc. fully dimensioned hoarding and fencing, access for pedestrians, street furniture), certified structural details/Computations where required, services i.e. location of underground pipes, gas mains etc. demolition procedures and approved documentation from the relevant building surveyor.
- Full Copy of Title
  - (Excluding applications for Street Hoarding – Local Law 2 and Reg's. 130, 153, 154). Issued no later than 6 months. A full copy includes the registered search title page and all instruments detailed on this page. i.e. Plan of Subdivision (PS) with copies of any Covenants & any 'Section 173 Agreements' that may be referred to on the Title or PS.
- Copy of South East Water Approval (for Building over Easement Reg 130).
- Copy of Melbourne Water Approval (For Reg's. 153, 154).
- Signed Indemnity Form (For Reg's. 130, 153, 154).
- Copy of Planning Permit (Where issued).

### What conditions are possible when consent is granted?

It's possible that approval to build over the drainage easement may be granted but subject to certain conditions that need to be adhered to and all associated costs borne by the applicant. Possible conditions may include some or all of the following:

- Pipe upgrade works if the pipe is under capacity and/or final stage of service life
- Installation of additional drainage pits
- Protection works for Council drainage
- Footing depth requirements
- Protection works to neighbouring property assets

- Protection works for vegetation.

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

Please note it is not always possible to remove an easement. Unused easements (ie without any assets/pipes) may provide overland flow paths or be required for future use. Council's Engineers would need to check and assess if there are any plans to construct an easement drain in the future and/or the easement is required to be kept clear to provide an overland flow path.

One of the options to find out if any assets are present is to lodge a **dial before you dig** inquiry by calling 1100 or submitting an online application at <https://www.1100.com.au/>.

If you have ascertained there are no assets contained within your easement you may apply to remove and/or vary the easement by lodging a Planning Application in accordance with *Clause 52.02 Easements, Restrictions & Reserves* of the City of Kingston Planning Scheme.

For more information on how to apply for a Planning Permit refer to the below link:

<http://www.kingston.vic.gov.au/Property-and-Development/Planning/Planning-Permit-Process/Lodging-Your-Application>

For more information on Clause 52.02 of the Kingston Planning Scheme please refer to the below link:

[http://planningschemes.dpcd.vic.gov.au/schemes/vpps/52\\_02.pdf](http://planningschemes.dpcd.vic.gov.au/schemes/vpps/52_02.pdf)

## 5. How can I apply?

Please click on the below link which will take you to the Building over Easement application form on Council's website (Council Report and Consent Forms).

<https://bit.ly/2sUAtga>

## 6. Related documents

Relating to	Document
Permits	Application for Report and Consent 130, Building over and Easement
	Stormwater Legal Point of Discharge (LPD)
	Temporary Discharge Permit (TDP)

## 7. 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.

---

## 8. More Information

If you have read the above information and still have further questions in relation to building over an easement please contact Council's Development Engineers on (03) 9581 4131.

## 9. Contact Us

City of Kingston  
Planning Customer Service Counter  
Level 1  
1230 Nepean Highway  
CHELTENHAM VIC 3192

**P.** 1300 653 356

**E.** [info@kingston.vic.gov.au](mailto:info@kingston.vic.gov.au)

**Please note:** This guideline is current as at the date of approval. Refer to Council's website ([www.kingston.vic.gov.au](http://www.kingston.vic.gov.au)) to ensure this is the latest version.



City of  
**KINGSTON**



1230 Nepean Highway,  
Cheltenham, VIC 3192  
PO Box 1000, Mentone, VIC 3194



1300 653 356



131 450



info@kingston.vic.gov.au



[kingston.vic.gov.au](http://kingston.vic.gov.au)