

Guidelines for Building Over Easement

Infrastructure Department

February 2022

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Table of Contents

1. Guidelines intent.....	3
2. Scope.....	3
3. Guidelines statement.....	3
3.1 Permissible Structures (Consent)	3
3.2 Non-permissible structures (Refusal)	4
4. Frequently Asked Questions	4
What is an easement?	4
What is an implied easement?	5
What is build over easement?	5
What are the minimum clearance requirements to Council assets?.....	5
How do I apply to build over an easement and how long does it take?	7
What are the applicable fees involved to build over an easement?	7
What is required to be submitted when applying for a build over easement?.....	7
What conditions are possible when consent is granted?	8
What if the easement is clear and I want it expunged or I want to divert the pipe and easement?	8
5. How can I apply?	9
6. Related documents.....	9
7. Definitions & abbreviations.....	9
8. More Information	9
9. Contact Us.....	9

1. Guideline's intent

These guidelines have been prepared to provide guidance for applicants as to what structures are appropriate, as well as possible conditions related to building over Council easements and Council assets.

Please note, this document is to be used for general guidance only as not all build over easement scenarios can be covered. Decisions will be made on a case-by-case basis and each proposal assessed on the specific works proposed.

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. Consent is required from Council for both registered and implied easements.

Council restricts and controls the construction of structures over easements and drainage assets because doing so without Council consent 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. Guideline's statement

3.1 PERMISSIBLE STRUCTURES (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 or severely restrict use of the easement for existing or future Council assets or other drainage purposes. A detailed plan of the proposed structure including footing details must be submitted for approval of any structure.

In general, the following structures are supported over Council vested easements and require Council consent prior to works:

- Garage / Shed / Carport
- Swimming Pool Safety Barriers
- Verandah / Pergola
- Decking
- Fencing
- Eaves (<600mm)
- Steps/Stairs
- Retaining walls (subject to height/depth)

3.2 NON-PERMISSIBLE STRUCTURES (REFUSED)

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 Buildings
- Basements
- Swimming Pool/Spa and equipment (both inground and above)
- Sheds & Garages over 9.0m in length
- Underground Car Stacker
- Underground Rainwater Tank
- Rainwater Tank greater than 3kL in size
- Private services such as meters, private stormwater pipes, electricity lines etc
- Structures to be built over an easement containing a Council stormwater pipe greater than 450mm in diameter

4. Frequently Asked Questions

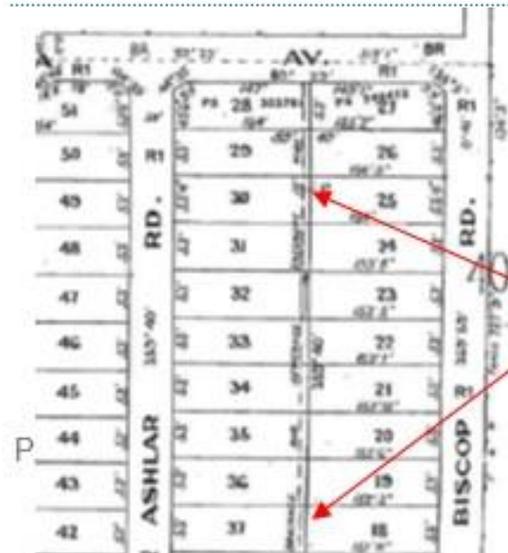
What is an easement?

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, electricity and carriageway easements.

Easements are generally shown on your copy of title and shown on the plan of subdivision (POS). If you don't have a copy of your POS please apply through the City of Kingston website or apply through LANDATA. The POS will show you if there are any easements on your property and list authorities that may have an interest in that portion of land. Easements can contain existing services such as stormwater pipes/pits, sewer lines, electricity lines and gas mains or they may be empty but reserved for future services.

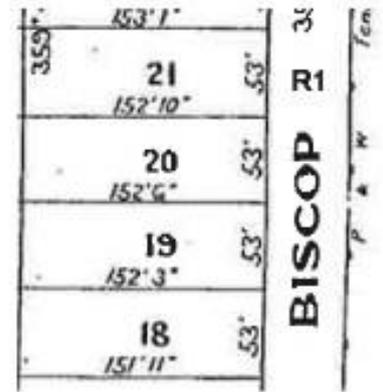
Easements are shown on your title, but your title will not show if any assets or services are located within the property. One way to find out if any services or assets are present in the easement is to lodge a **dial before you dig** inquiry by calling 1100 or submitting an online application at <https://www.1100.com.au/>.

Please note, Council may have pre-construction records of the location of stormwater pipes/pits on your property, but it is best practice to confirm the exact location of any Council stormwater assets on-site.



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 a 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 113 of the Local Government Act 2020.

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.

What are the minimum clearance requirements to Council assets?

The following minimum clearance requirements must be achieved (refer to diagrams on next page):

Depth of Footings

- The base of any footings within the easement, or along the easement line, are to be in-line with the base of the pipe (invert level).

Horizontal Clearance

- Any footings in or adjacent to the easement have a minimum 600mm horizontal clearance from any stormwater pipe.

Minimum Cover

- For any works within an easement, the existing cover over the pipe must be maintained, unless under-instruction of Council's Development Engineer. See Figure 3 for an example of acceptable site cut and cover for a retaining wall.

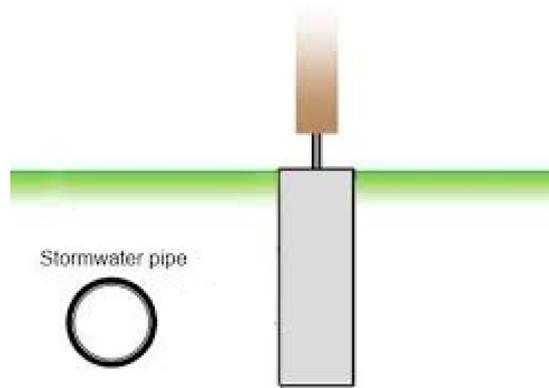


Figure 1 – Footings to pipe invert level example

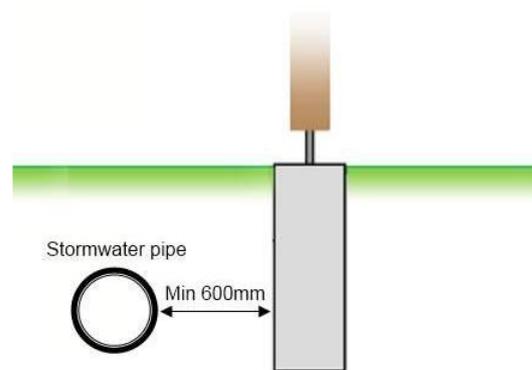


Figure 2 – Horizontal Clearance



Figure 3 – Minimum Cover Requirements

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

You can apply online to build over an easement via Council's website. For more information on how to apply for a build over easement refer to the below link:

<https://www.kingston.vic.gov.au/Property-and-Development/Building/Building-over-Easement>

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 and may take longer depending on the plans, existing site constraints and conditions. Please note the application fee is not refundable if your application is refused.

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 \$294.70 per application, up until 30 June 2022, which is subject to change on an annual basis.

Please note that applications that have a Council stormwater pipe in the easement may be subject to additional fees, which can include:

- If the condition of the asset needs to be checked prior to and upon completion of the works, CCTV will need to be conducted at the expense of the applicant (in the order of \$1000 for pre and post construction CCTV) that will be arranged by Council. Depending on the condition of Council's asset, Council may need to carry out maintenance works prior to the commencement of any private works if approval was granted.
- CCTV monitoring and investigations can be subject to the complexity of the situation and is subject to annual price increases by the companies that undertake these works.
- If there is a requirement for a s173 Agreement to be lodged on the title, all costs are to be incurred by the applicant.
- If there is any damage to a Council asset as a result of private works within the easement, the owner of the property is to incur all costs associated with any rectification works. All rectification and CCTV works must be to Council's satisfaction and paid for by the applicant.

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 describing what works are proposed over the easement).
- A set of Proposed Building Plans that must include:
 - (i) If there's a Council asset within the subject site, a survey or photographic evidence of the pipe's exact location to be provided to Council. The exact location of the pipe is confirmed on-site. Please contact a surveyor for a service locator if you have difficulty.
 - (ii) A scaled site plan (typically 1:200) showing all proposed structures over the easement, including easement dimensions and pipe/pit location (if applicable). This must also show a minimum 1 metre clearance between any proposed structures and any Council pit/s (if applicable).

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- (iii) An elevation plan showing the proposed structure over the easement.
 - (iv) A scaled cross section (typically 1:100) showing footings offset a minimum 600mm from the edge of the confirmed pipe's location (if applicable, see Figure 2)
 - (v) A scaled cross section (typically 1:100) showing footings to the depth of the pipe's invert level (if applicable). (see Figure 1)
 - (vi) A copy of any current Town Planning endorsed drawings (if applicable for developments with Planning Permits).
- Full Copy of Title
 - Issued no later than 3 months. A full copy includes the registered search title page and all instruments detailed on this page. i.e. Plan of Subdivision (POS) with copies of any Covenants & any 'Section 173 Agreements' that may be referred to on the Title or POS.
 - Copy of all other vested authority approvals for works within the subject easement. For example: other property Lots, South East Water, Melbourne Water, Ausnet and United Energy.
 - Agreement to Council's indemnity terms and conditions in the online application
 - Copy of Planning Permit (if applicable).

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 (ie in some circumstances Council may require footing depth to be the same as the pipe invert level)
- 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.

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

5. How can I apply?

Please click on the below link to apply online:

<https://www.kingston.vic.gov.au/Property-and-Development/Building/Building-over-Easement>

6. Related documents

Relating to	Document
	Drainage Information / Legal Point of Discharge (LPD)
	Temporary Discharge Permit (TDP)
	Asset Protection Permit
	Road Opening Permit

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 are drainage, sewerage and carriageway easements which could be either registered or implied easements.
CCTV	Closed Circuit Television Video (CCTV) involves the use of a camera to see inside a drain, sewer or pipeline. Equipped with transmitters, CCTV units can send images and data so that any issues with the pipe can be identified.

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 Building Department on (03) 9581 4131 or info@kingston.vic.gov.au.

9. Contact Us

City of Kingston
Planning Customer Service
Ground Floor
1230 Nepean Highway
CHELTENHAM VIC 3192

P. 1300 653 356

E. 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) to ensure this is the latest version.



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