

Civil Development | July 2025

Build Over Easement Guideline

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Purpose

This guideline provides an overview of the requirements for obtaining Build Over Easements (BOE) consent within The City of Greater Dandenong. It generally outlines what types of works may be permitted or prohibited and will assist property owners in understanding when consent is necessary.

It is Council's intention to review all applications for Build Over Easement consent in an appropriate, fair and consistent manner and guide applicants to avoid delays, unexpected costs or the need for remedial works due to non-compliance.

All sites and site conditions vary so it must be noted that this guideline is general in nature and site-specific conditions can cause deviations from this guideline's content.

Objectives

Council's Build Over Easement consent process will be guided by the following core objectives:

- **Protect Council Assets:** Mitigate damage to Council assets within easements.
- **Limit Liability:** Protect Council from future liability due to damage or obstruction within easements which may impact the subject property, surrounding properties or the general drainage network.
- **Preserve Future Use:** To allow for the replacement, installation or upgrade of drainage assets within the easement in future, should the need arise.
- **Maintain Access:** To preserve clear and safe access for Council to inspect, maintain or repair infrastructure located within the easement.
- **Safeguard Overland Flow Paths:** To ensure that overland flow is not obstructed, diverted or reduced in capacity.
- **Inform Property Owners:** To ensure current and future owners of the property are aware of their responsibilities, including the potential costs and obligations associated with building over an easement.

In all instances where a Build Over Easement application is approved, Council will not be liable for costs associated with removal or reinstatement of approved structures or works if the need to access the easement is required in future.

Frequently Asked Questions

What is an Easement?

An area of land, or part of a lot reserved by law for a specific purpose, usually documented on a Certificate of Title. Council manages a significant portion of the municipal stormwater drainage network through easements.

Implied easements also exist one metre laterally to any water authority assets. These easements are not documented on Title, so it is recommended to request asset information from all relevant authorities prior to planning works.

Council's Local Drainage Information application can be found on the website [here](#).

Do I require Build Over Easement consent from Council?

A person proposing works over an easement must obtain consent from all relevant authorities that have interest in that easement. Any works that encroach into or within 1 metre of a Council asset requires Council consent.

Consent may be applied for on Council's website.

Consent from Council is **not required** for the following works:

- Turfing, mulching, gravel or similar ground coverings.
- Stepping stones or other surface level treatments that are easily removable.
- Temporary or portable items such as furniture, garden ornaments, trampolines or similar that are not affixed to the ground.
- Replacement of timber boundary fences.

For clarity, applicants are encouraged to contact Council's Civil Engineering department.

What works are NOT permitted within an Easement?

Works are **unlikely** to be approved in, over, on or within an Easement vested in Council where:

A. The Easement:

- is required, or has the potential to be required, for future drainage or upgrade works.
- functions as an overland flow path or holds water during a storm.
- contains a critical network pipe.
- has restricted or limited access.
- has a requirement for regular ongoing maintenance.

B. The proposed works include:

- Any part of habitable dwelling.
- Any structure under the same roofline as the habitable dwelling or supporting another structure.
- In-ground swimming pools, spas or rainwater tanks.
- Above ground swimming pools, spas or rainwater tanks greater than 3000L.
- Structures containing sewerage fixtures within the easement.
- Industrial buildings except some canopies.
- Any structure over or within 1m of a stormwater access pit.
- Strip footings.
- Masonry structures over a Council asset.

Prohibited works can:

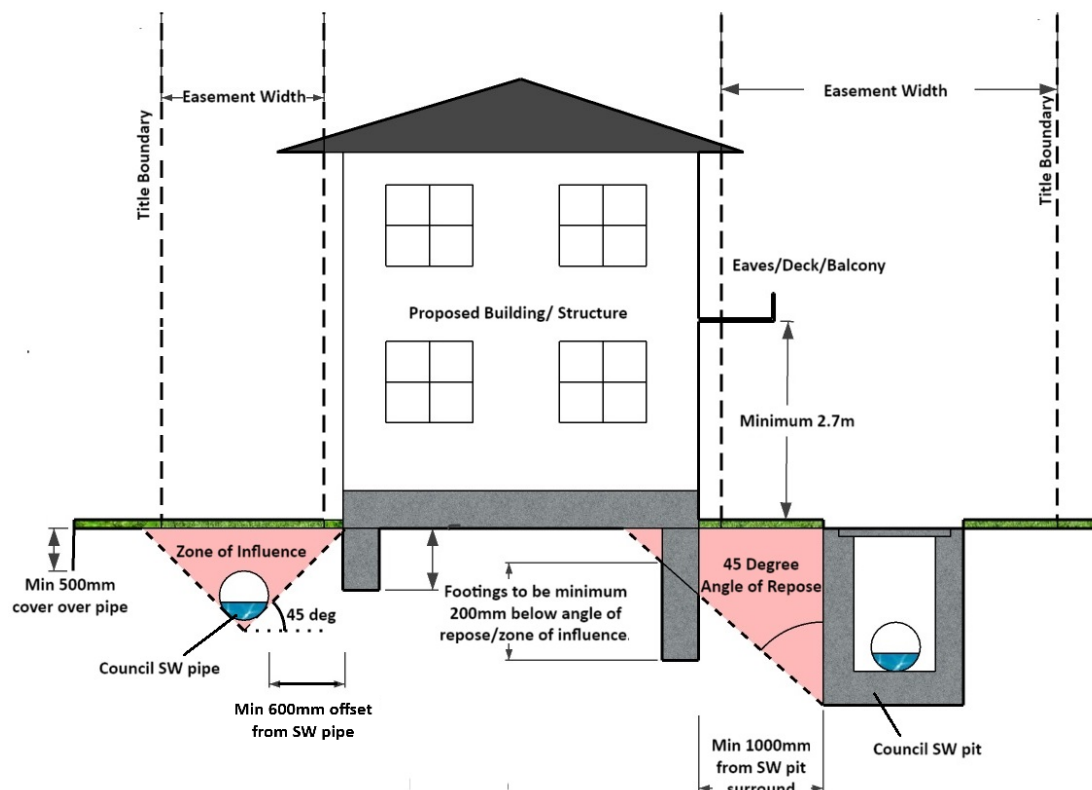
- Impede access for maintenance and emergency repairs.
- Increase the risk of flooding, asset failure and structural damage.
- Interfere with current or future stormwater capacity.
- Pose legal and financial risks to both the property owner and Council.

What are Council's minimum requirements?

By way of general guidance only, Council, at a minimum, require the following for any Build Over Easement application:

- **Horizontal offset** – Minimum 600mm horizontal clearance from any stormwater pipe and 1000mm horizontal clearance from the surround of a manhole/maintenance pit.
- **Vertical cover** – Minimum cover of 500mm to the top of Council's drain must be maintained from finished surface level.
- **Angle of repose** – The base of any footings in or adjacent to the easement are founded a minimum of 200mm below a line drawn at an angle of 45 degrees from the invert of any stormwater pipe or edge of pit.
- **Height clearance** – Where eaves or similar are proposed over an easement, a minimum of 2700mm vertical clearance must be maintained from the finished surface level to underside of structure.
- **Fill** – Maximum 500mm fill above existing natural ground level (NGL).
- **Loading** – Mitigate any additional loading on Council assets where possible.
- **Location proving** - Where a structure or works are proposed within 1 metre of a drainage pipe, the location of that asset must be physically proven before works commence.

CGD Minimum requirements diagram



How do I apply for Build Over Easement consent?

Council consent can be applied for on the Building Over Easements webpage on Council's website.

There are **two** types of consent dependent on the type of works proposed:

<p>For major works requiring a Building Permit or anything that affects building safety.</p> <p>Apply for:</p> <p><u>Report and Consent (Regulation 130)</u></p>
<p>For small, simple, or temporary works/projects that do not require a Building Permit.</p> <p>Apply for:</p> <p><u>Civil Works Consent</u></p>

Visit [When is a Building Permit Required?](#) for further information regarding the requirement for a Council Building Permit

Contact Council if you require clarity on which application you require.

How long does it take Council to finalise an application?

Build over easement applications are generally finalised within **2 - 4 weeks** of the submission date. This timeframe may deviate depending on the type and complexity of the proposal.

What conditions may Council apply for approvals?

In some circumstances, Council may specify that an application only be approved if certain conditions are met. These conditions ensure that Council assets are adequately protected whilst allowing an opportunity to build over the easement.

Examples of these conditions may include but not be limited to:

- Replacement or upgrade of Council assets
- Materials to be used
- Proving asset location
- Weight of building, structure or works
- Construction type

- Construction joints
- Engineering report
- Offsets
- Access
- Angle of repose
- Depth, location and type of footings
- CCTV of a drain
- Easement or Section 173 Agreement

What is an Easement or Section 173 Agreement?

In some cases, Council may require a formal agreement to support Build Over Easement approval. These agreements are a binding acknowledgement of agreed conditions between Council and the property owner.

A Section 173 Agreement is registered on Title to ensure that owners, both current and future, will be aware of their legal obligations. It is prepared by a 3rd party solicitor at the cost of the property owner.

An Easement Agreement is not registered on Title and is prepared by Council. Among other things, the property owner must agree to notify future owners of the agreement and its associated conditions.

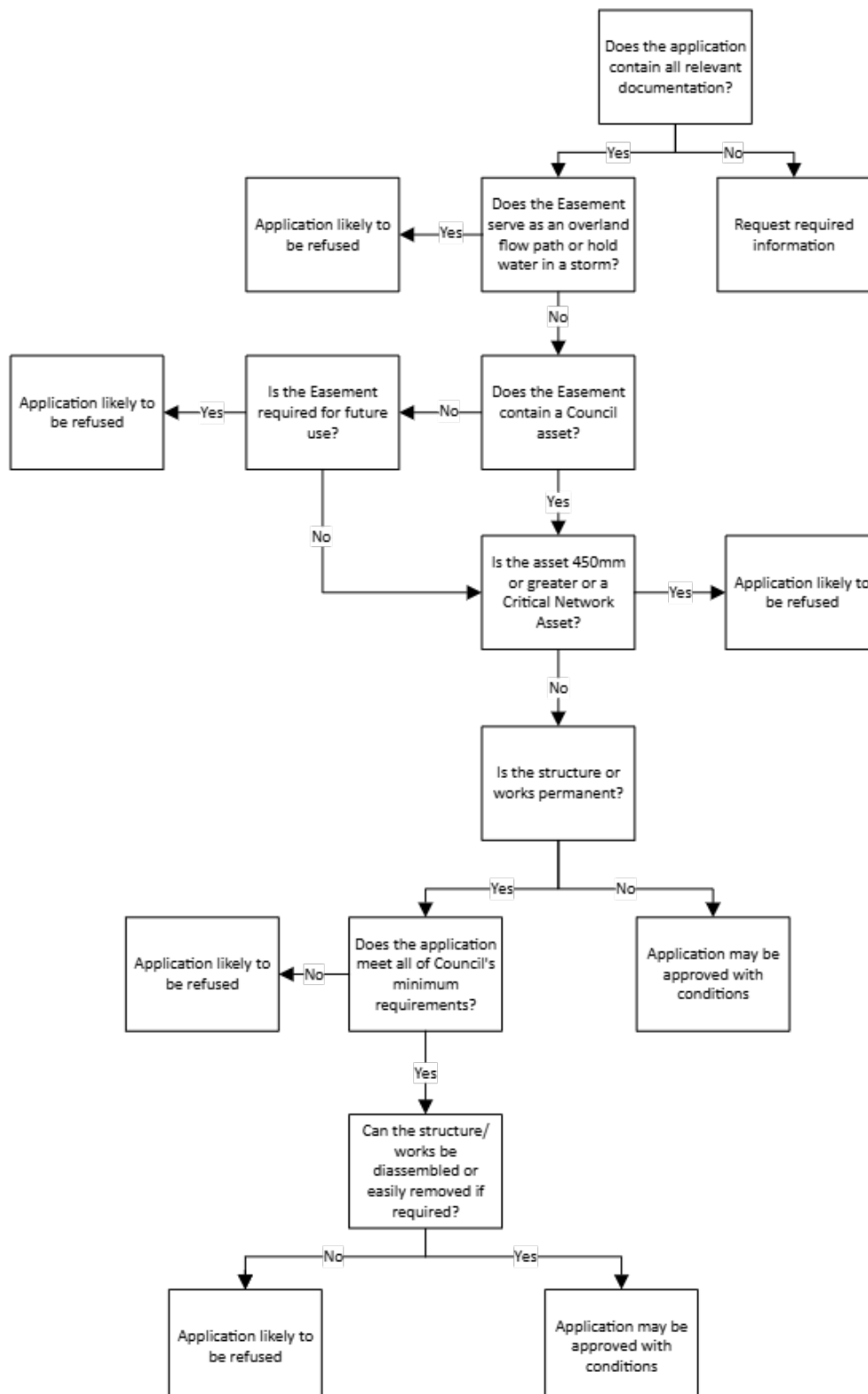
These agreements exist to address:

- **Access** – Council's right to enter a property and access the easement at any time for inspection, maintenance or asset upgrade.
- **Indemnity** - Council indemnity and public liability for damage occurring in the vicinity of the easement or asset.
- **Future Costs** – The owner agrees to bear all costs associated with removal, reinstatement or structure relocation if required
- **Liability** – Ongoing legal responsibility for ensuring the works do not interfere with Council infrastructure and that obligations extend to future owners.
- **Use** - Allow property owners to use the easement land where possible.

The preparation of these agreements and any other works required by Council shall be at the cost of the owner of the subject land.

What is Council's decision process?

Council reviews each Build Over Easement application on a case-by-case basis considering site specific conditions. This means that decisions may differ between sites even if a proposal is the same or similar in nature. More broadly, Council's decision process is governed by the workflow below.



Structure and Work Types

Council assesses Build Over Easement (BOE) applications based on the type of structure proposed, its impact on existing infrastructure, and its potential to obstruct future access or drainage functionality. The type and permanence of a structure heavily influence whether approval may be granted and under what conditions.

A. Habitable Dwellings and Permanent Structures

Includes houses, extensions, dependent person's units and similar enclosed, permanent buildings.

- Generally, not permitted over or within easements where Council assets exist or where future drainage use is possible.
- May only be considered where no asset exists within or near the easement, and no overland flow path is present.
- Must comply with minimum requirements.

B. Lightweight, Non-habitable – Demountable structures

Includes pergolas, verandas, gazebos, decks, shade sails and sheds or similar.

- More favourably considered than permanent buildings, provided:
 - They are single-storey and easily removable
 - The structure traverses Council drainage asset
 - Clear offset from drainage pits and pipes is maintained

Under the Building Regulations 2018, Section 130, it is the responsibility of the landowners (at their cost) to remove and reinstate any structure(s) built within the easement if Council require the need to access the asset at a future date.

The owner must ensure that the structure is designed to be easily removed and reinstated for this purpose.

- Structures must:
 - Comprise of sections no greater than 4 metres.
 - be structurally independent/detachable from any habitable structure.
 - No plumbing fixtures, fixed storage / shelving or internal walls that restrict access will be allowed within a structure over a drainage pipe or easement
- Consent may be granted with the condition that the structure can be removed at the owner's cost if asset access is required in the future.
- Will typically require an Easement Agreement.

C. Fences

Generally permitted within easements with conditions (excluding Masonry structures).

Footings within easements should be avoided. If unavoidable:

- Footings must respect angle of repose conditions
- 600mm minimum offsets from pipes and 1000mm offset from pits must be maintained

Must not obstruct overland flow paths or block access.

D. Landscaping

- Turf and mulch are permitted without Council consent.
- Trees are not permitted within the easement due to root intrusion risks.
- Shrubs may be allowed depending on:
 - Species and mature size
 - Location and distance from Council assets
- Fill may be permitted up to 500mm, provided overland flow is not obstructed.
- All landscaping must meet minimum requirements at mature size.

E. Retaining Walls

- Maximum height of 500mm within an easement.
- Must maintain minimum cover over assets (500mm) and comply with footing offset and angle of repose requirements.
- Will typically require an Easement Agreement.

F. Cut and Fill

- Permitted only if asset cover and overland flow paths are maintained.
- Council drains must retain 500mm minimum vertical cover. Physically proven across intervals specified by Council.
- Plans must show proposed finished surface levels with reference to Australian Height Datum (AHD).

G. Driveways and Paving

- Permitted over easements only as non-structural infill slabs unless formally approved through a planning permit.
- Must maintain minimum cover over assets (500mm to underside of slab).
- Must not transfer load onto Council assets.
- Removal and reinstatement must be possible if asset access is needed.
- Will typically require an Easement Agreement.

H. Swimming pools

- In-ground pools, spas, and large tanks are not permitted within an easement.
- Above-ground pools/spas under 3000L may be considered, subject to conditions.
- Surrounding landscaping or paving may be approved if:
 - i. Removable
 - ii. No additional loading is imposed on drainage infrastructure
- Will typically require an Easement Agreement.

I. Sheds

- Sheds under 10m² may be permitted if:
 - i. Lightweight and removable
 - ii. Clear of pits and major pipes
 - iii. Do not include any permanent fixtures or fittings
 - iv. Proposed on foundation of crushed rock or max 100mm infill slab
- Larger sheds are assessed as permanent structures and are generally not permitted over an easement that contain Council drainage assets.
- Will typically require an Easement Agreement.

J. Other

Works or structures that fall outside the scope of this guideline will be subject to individual evaluation on a case-by-case basis to verify compliance with Council requirements.

Definitions

Angle of Repose	A 45-degree line drawn from the invert (base) of a Council stormwater pipe or pit. Footings within or near the easement must be placed below this line to prevent load being transferred to the asset.
Asset (Council Asset)	Stormwater infrastructure owned or managed by Council, including pipes, access pits, and manholes.
Build Over Easement (BOE) Consent	Council's written approval to allow construction or works over or near a Council-managed easement.
Certificate of Title	An official land ownership record that includes information such as property boundaries, ownership details, and registered easements.
Cover (Vertical Cover)	The depth of material above the top of a Council drainage asset. Council requires a minimum of 500mm cover to protect infrastructure.
Critical Network Pipe	A key component of the stormwater drainage network that carries significant flow. Structures are not permitted over these assets. Generally, 450mm diameter or greater or serve a significant catchment area.
Demountable Structure	A lightweight, non-habitable structure such as a pergola, veranda, or small shed, designed to be easily removed if Council access is required.
Easement	An area of land reserved by law for drainage or other public service infrastructure, often noted on the Certificate of Title or Plan of Subdivision.
Easement Agreement	A formal agreement prepared by Council (not registered on Title) outlining the property owner's responsibilities and conditions for approval. The owner must inform future buyers of the agreement.
Filling (Fill)	Raising ground levels within an easement. Council permits a maximum of 500mm fill, provided overland flow paths are not obstructed.
Footings	Structural elements of a building that must maintain offset from Council pipes and comply with angle of repose requirements.

Habitable Dwelling	A permanent structure used for residential purposes, such as a house or dependent person's unit. Generally not permitted over easements containing Council assets.
Implied Easement	An assumed easement located within 1 metre of water authority assets, even if not shown on Title. Applicants should request asset information from relevant authorities.
Local Drainage Information (LDI)	A Council service that provides property-specific details on stormwater assets including pipe size, depth, and location to assist with planning works.
Overland Flow Path	A route over land where stormwater flows during or after rain events. Structures must not block or reduce the capacity of these paths.
Plan of Subdivision	A legal plan attached to the Certificate of Title that shows lot boundaries, easements, and other registered property details.
Section 173 Agreement	A legally binding agreement between Council and a landowner, registered on Title, that records the conditions of approval for building over an easement. Prepared at the owner's expense.
Setback / Offset	The minimum required horizontal distance between a structure and a Council drainage asset or pit. Pipes: 600mm minimum; Pits: 1000mm minimum.

DISCLAIMER

Although the information contained in this fact sheet has been researched and presented with due care and attention, City of Greater Dandenong accepts no responsibility for any errors or omissions which may have accidentally occurred within the publication.

