

Build Over Easement Policy

1 Policy alignment

Build over easement applications are assessed as a requirement of the, 'Building Regulations 2018'. Regulation 130 of the, 'Building Regulations 2018' states:

Report and consent for building over easements.

- 1. The report and consent of the relevant service authority must be obtained to an application for a building permit to construct a building over an easement vested in that service authority.*
- 2. This regulation does not apply to implied easements under the Subdivision Act 1988.*

Cardinia Shire Council's vision is for Cardinia Shire to be developed in a planned manner to enable present and future generations to live healthy and productive lives and to enjoy the richness of the diverse and distinctive characteristics of the shire.

This policy supports Council's vision and aims to ensure all build over easement applications are assessed in a planned manner to benefit the community, while also supporting Section 3.1.4 of the Council Plan 2018: 'Manage Council assets like roads, drainage, footpaths and buildings etc. In a way that ensures they are adequately maintained over their life'.

2 Purpose

Council's drainage assets and other important infrastructure are located within easements which provide essential services to the community.

The purpose of this policy is to ensure Council's drainage assets are protected from being impacted by any building or works that occur within or around an easement, ensure adequate access to Council's drainage assets and ensure proposed works will not prevent the ability to use easements for future works.

3 Scope

This policy applies to the assessment of build over easement applications submitted by property owners or an agent of the owner to Council as a requirement of, 'Regulation 130 of the Building Regulations 2018'.

Detailing the considerations in which build over easement applications will be assessed and outlining the requirements of any building or works within an easement benefiting Council, this policy supports the Council Plan actions.

4 Policy description

4.1 Special conditions

Approval will be given for buildings or works to be located over an easement for the purpose of drainage and sewerage set out on plans of subdivision of land registered and approved by Land Use Victoria subject to the following conditions:

1. A viable alternative location for the proposed building or works is not available on the site.
2. The proposed structure or works will not prejudice or unduly obstruct or limit the ongoing maintenance of any existing Council stormwater drain or asset located within the easement.
3. Overland flow is unlikely to take place along the line of the easement in the event of the capacity of drainage in the easement or adjoining easement being exceeded.
4. The proposed structure will not jeopardise the drainage of an abutting allotment or prejudice Council's future drainage network.
5. Approval to build over the easement has been obtained from all statutory authorities and parties that have rights over the easement.
6. The proposed structure is in conformity with the National Construction Code (NCC).
7. For any other reason Council considers the building or works should not be performed in, over, on or within the easement.

4.2 Design requirements

4.2.1 Building works and earthworks

The proposed building or works must be in conformity with the National Construction Code (NCC). In addition, building or works near or over a drainage asset must not:

- Interfere with or adversely affect the function of the drainage asset
- Place any additional load onto the drainage asset that impacts the structural integrity.

4.2.2 Permanent structures

Permanent structures will not be granted a build over easement consent if they cover or obstruct access to:

- An existing Council drainage system
- An easement required for the construction of future drainage systems
- Easements which provide overland flow paths for stormwater.

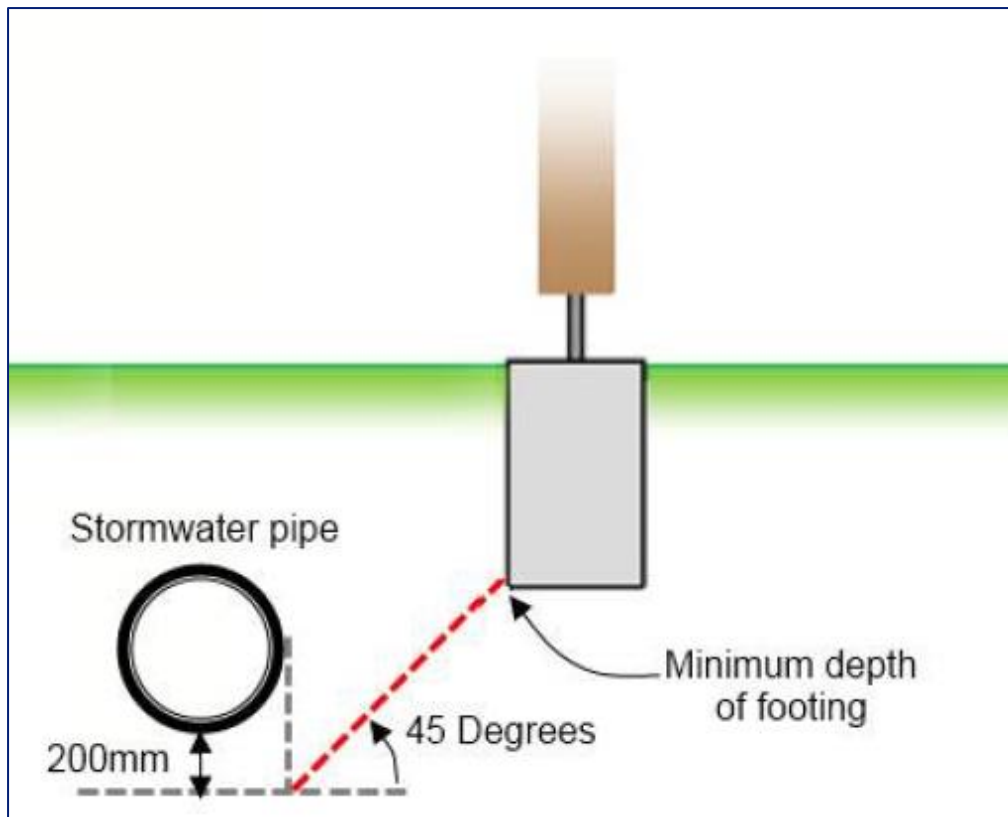
4.2.3 Minimum clearance

The following minimum clearance requirements must be achieved.

1. Angle of repose

The base of any footings in or adjacent to the easement are founded 200mm below a line drawn at an angle of 45 degrees from the invert of any stormwater pipe.

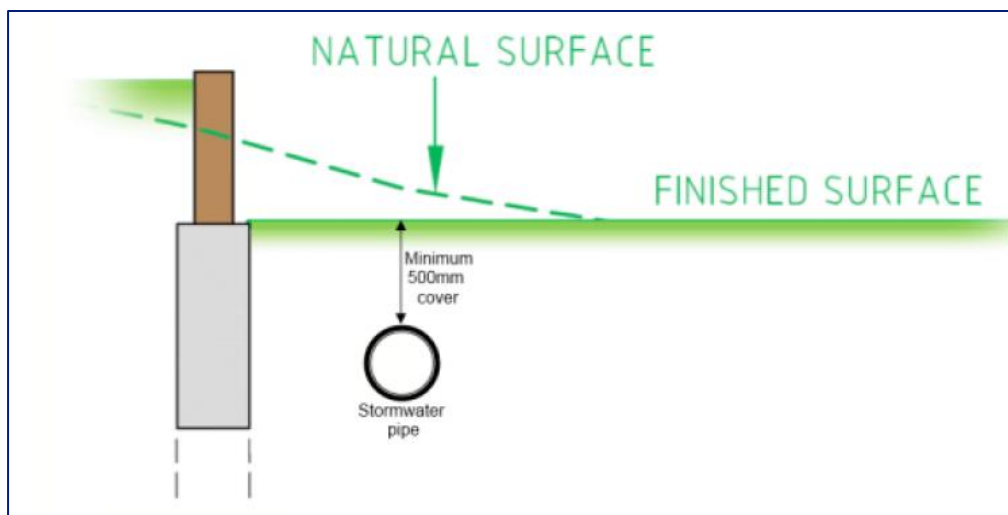
Figure 1. Angle of repose



2. Minimum cover

For any works within an easement, a minimum cover of 500mm to the top of Council's drain must be maintained.

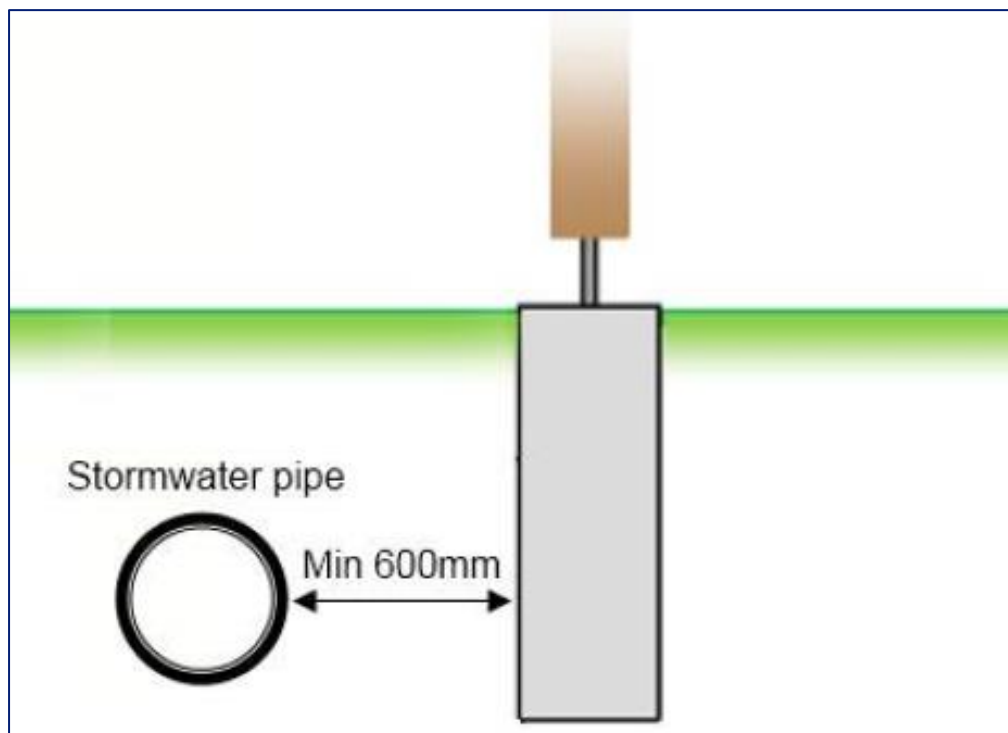
Figure 2. Minimum cover



3. Horizontal clearance

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

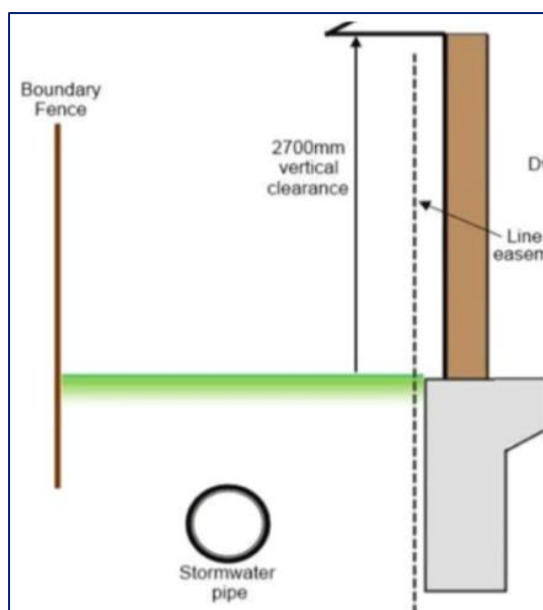
Figure 3. Horizontal clearance



4. Vertical clearance

Where eaves are proposed over an easement, a minimum of 2,700mm vertical clearance must be maintained from the finished surface level.

Figure 4. Vertical clearance



4.3 Assessment and implementation

4.3.1 Permissible works

Proposed building or works that comply with the above, '4.1 Special conditions' and, '4.2 Design requirements' may be granted consent to build over an easement. Proposed works likely to be granted a consent to build over an easement include:

- Excavation
- Earthworks
- Fill
- Eaves
- Fencing, including pool fencing
- Concrete paths
- Retaining wall
- Hot water service.

Permissible works subject to a Section 173 agreement

When planning to build within an easement, it is important to consider that anything constructed within an easement may need to be removed if access to the easement is required.

For larger structures over the easement that may be difficult to remove, Council may provide approval for the structure to be built over the easement subject to a section 173 agreement being entered into between the landowner and Council.

This agreement allows for a structure to be built over the easement whilst also giving permission for the structure to be removed if the easement needs to be accessed in the future.

Section 173 agreements are registered on the property's title and will be applicable to any future owners of the property.

A section 173 agreement may be required before approval to build over an easement for the following works.

- Water tank
- Garden shed
- Pergola/ veranda
- Deck
- Detached steel frame shed
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4.3.2 Prohibited works

Permanent structures are not permitted to be built over an easement. Applications for a permanent structure will not be granted a consent to build over an easement. Examples of permanent structures that are prohibited to be built over an easement include:

- Permanent brick or weatherboard garage or shed
- Enclosed extension of garage
- Dwelling or habitable building
- Commercial or industrial building
- Dependant persons unit
- Swimming pool, spa, or pond (above and in ground)
- Sauna.

4.4 Appeals

Pursuant to Section 144 of the *Building Act 1993*, the owner of the building or land who requests determination to be made, approval to be given, or discretion to be exercised may appeal to the Building Appeals Board against:

- That determination or approval or the exercise of that discretion or
- The failure within a reasonable time, or refusal to make that determination, give that approval or exercise that discretion.

In accordance with Section 146 of the *Building Act 1993* and Regulation 271 of the Building Regulations 2018, the prescribed appeal period is 30 days from the date of Council's determination.

5 Responsibilities

Build over easement applications are assessed by Cardinia Shire Council's Development Team. Key roles established in the build over easement process are summarised below.

1. Development support officer, Infrastructure Services

- Act as the assessing officer for build over easement applications submitted to Council.
- Consult with stakeholders and provide high levels of customer service.
- Assess build over easement applications in line with all relevant Council policies and procedures.

2. Development engineers, Infrastructure Services

- Provide specialist advice and recommendations in relation to build over easement applications.

3. Development coordinator, Infrastructure Services

- Provide overall direction and decision making for all build over easement applications.
- Ensure applications are assessed in line with all relevant Council policies and procedures.
- Consult with stakeholders and provide high levels of customer service.

6 Compliance

All building or works over an easement within Cardinia Shire must have written consent from Cardinia Shire Council. This is a requirement of Regulation 130 of the Building Regulations 2018 and Cardinia Shire Council's Local Law 17.

The Building Regulations 2018 can be found at the Victoria Legislation web page:

www.legislation.vic.gov.au

Section 130 of the Building Regulations 2018 refers to build over easement applications and states:

130. Report and consent for building over easements

1. *the report and consent of the relevant service authority must be obtained to an application for a building permit to construct a building over an easement vested in that service authority.*
2. *This regulation does not apply to implied easements under the **Subdivision Act 1988**.*

Cardinia Shire Council Local Law 17 can be found Cardinia Shire Council's website:

www.cardinia.vic.gov.au

Section 64 of Local Law 17 refers to building over a Council asset and refers to Council's ability to inspect works within an easement. The section states:

64. Protection of assets and land

- 64.1 a person must not:

- 64.1.1 damage, interfere with, destroy, or deface
- 64.1.2 undertake an activity which may damage, interfere, or destroy
- 64.1.3 build or fill over, conceal, or plant vegetation that may cause damage near a bridge, fence, footpath, nature strip, **road, municipal reserve**, service conduit, fire plug, fire hydrant or other asset vested in or under the control of Council, without a **permit**.

Maximum penalty: 20 penalty units

64.2 Council may inspect:

- 64.2. any connection to a Council asset, or
- 64.2.2 any works undertaken within a road or easement and impose a fee for the connection or inspection.

6.1 Recourse for non-compliance

Critical Council drainage assets, as well as strategic overland flow paths are located within easements throughout Cardinia Shire. These easements and the assets within, provide essential infrastructure to ensure that stormwater is managed effectively and in a planned manner. It is a paramount these assets remain unaffected by any works within or surrounding an easement.

Noncompliance with Council’s build over easement policy and related laws and legislation detailed in this document, would result in a detrimental impact on easement function and Council assets within the easement. Potential impacts of unauthorised works within an easement may include:

- Interfering or adversely impacting Councils stormwater drainage
- Impacting structural integrity of Council assets
- Impeding access to drainage assets, therefore preventing the ability to maintain assets and assess easements for functionality
- Obstructions delaying access requirements for future use of an easement and possibly effecting an easements ability to be used in the future.

Recourse for non-compliance may include penalties under relevant legislation/laws, subsequent removal of illegal structures and remedy works for damages.

7 Related documents

Type of document	Title and/or RMC link
Commonwealth/Victorian legislation	Building Act 1993 Building Regulations 2018 National Construction Code (NCC) Cardinia Shire Council Local Law 17
Strategic directions paper	
Policies	
Strategies	
Guidelines	
Procedures	

8 Glossary of terms

Asset

An item of property owned by a person or organisation, regarded as having value.

Easement

An easement is an area of land, or part of an allotment, reserved by law to allow provision of common state or municipal controlled infrastructure for a specific purpose.

Overland flow

Overland flow is excess rainfall runoff from homes, driveways, and other surfaces.

Plan of subdivision

A plan of subdivision allows an applicant to divide land into two or more new parcels of land. New parcels that can be created by a plan of subdivision are lots, roads, reserves, or common property.

Section 173 agreement

A Section 173 agreement is from Section 173 of the *Planning and Environment Act 1987*. It is a contract between Council and a landowner placing restrictions on how the land is used. In this policy, a Section 173 agreement refers to restrictions on land use over an easement.

Stormwater pipe

Stormwater pipes provide drainage for groundwater and rainwater from house roofs, streets, driveways, and other impervious surfaces.

Stormwater pit

A stormwater pit is a reinforced concrete chamber constructed below ground, designed to accept rainwater from surface inlets and/or one or more upstream stormwater pipes and to discharge this rainwater into a single downstream stormwater pipe.