

# General Guidelines for Consent to Build Over Easements



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*Lifestyle Capital of Victoria*

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## 1. Purpose and Intent

The build over easement guidelines provide a framework to determine types of structures that are appropriate to be built over Council easements.

An easement is generally a designated area of land, registered on the land title that allows Councils and other nominated authorities or agencies, the legal right to use and/or provide access rights to your property.

The Victoria State Building Regulation 2018 Section 130 requires a Report and Consent from the relevant service authority for any structure constructed over or within an easement vested in that service authority.

Typically, Councils utilise easements for essential drainage infrastructure, maintenance, installation, replacements or upgrades. Build Over Easement approval ensures the protection of Council's stormwater drainage assets. This ensures property owners and developers minimise the cost and inconvenience of removing structures that impact access to drainage assets, maintenance, and replacement or upgrade work as required.

## 2. Scope

Council consent is required to build structures within or over an easement vested in Council. Where drainage assets may exist within the property and not be covered by an easement, consent of Council is required for construction of any structure within 1m offset of the asset centreline. Council can provide a drainage Asset Plan, or a Land Information Certificate may be obtained from Council that advises of assets not within easements.

Council control and restrict construction over easements or drainage assets where it can:

- lead to difficulties with maintenance, replacement or upgrade work by restricting access and working space.
- expose Council and current or future property owners to excessive costs, liabilities and risks.
- compromise the integrity of the Council stormwater network to liability.

### 2.1 Easement Containing Council Stormwater Assets

- Council discourages building over easements that contain drains greater than 300mm in diameter, unless a viable alternative location for the proposed building or works is not available on the site.
- A component of a Build Over Easement application is the requirement of a CCTV inspection to be undertaken to ensure a satisfactory condition and integrity of the asset. Depending on the CCTV report of Council's asset, maintenance works may be required to be carried out by Council in order to approve the proposed build over.
- All components of the structure within the easement are to be removable, to enable maintenance works to proceed through the structure if required. Permanent structures that cannot be removed are not permitted to be constructed over the easement.

## 2.2 Easement Containing No Council Stormwater Assets

Approval may be given by Council for allowable structures to be built over an easement where no existing drainage asset exist. Council's requirements and conditions in this case ensure that any structure proposed within the easement will not adversely affect the construction of future drainage assets or restrict future access requirements. Council will also assess an easement requirement as an overland flow path.

## 2.3 Implied Easements - Council Stormwater Assets Not Covered by an Easement

It is not uncommon to have a Council stormwater drain or a private drain in a property not supported by a registered or recorded easement. Where a Council drain is not supported by a formal easement in favour of Council – because it performs a public drainage function – it is deemed to be vest in and under the management and control of Council pursuant to section 198 of the Local Government Act 1989. Section 148 of the Water Act 1989 states that Council consent is required for any structure to be built, or any filling to be placed within 1m laterally of any of the Council drainage asset.

Any future development or subdivision of the site will require the creation of a Drainage Easement in favour of Council to protect the drainage asset.

## 2.4 Comparison Diagram for Allowable and Prohibited Structures and Works

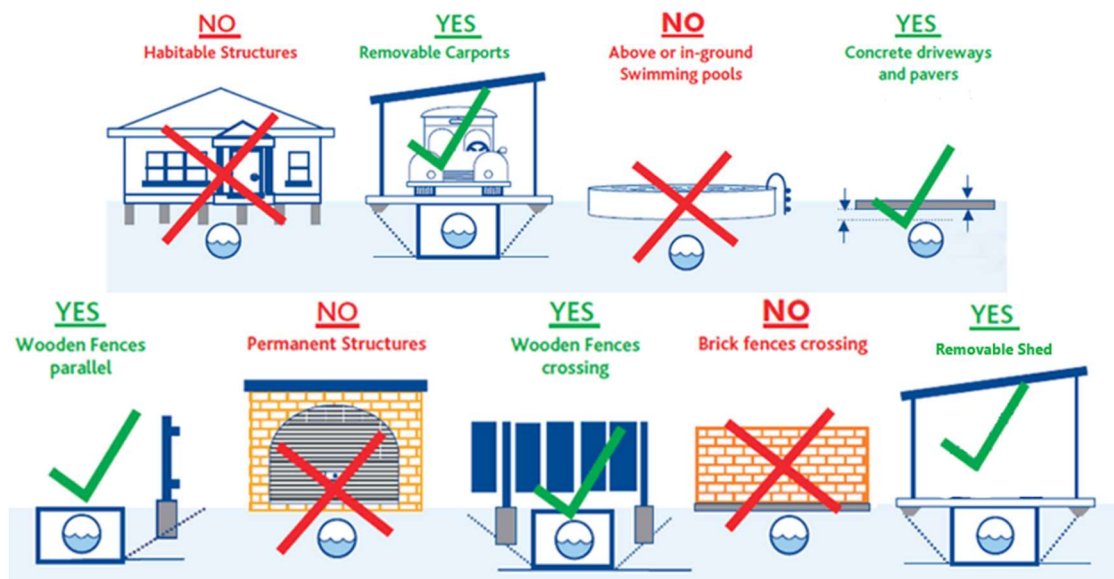


Figure 1: Allowable and prohibited structures and works (source: Melbourne Water)

## 2.5 Allowable Structures and Works

A detailed plan of the proposed structure including footing and offset details must be submitted for approval for works over an easement. This also applies to structures and works within one-meter (1m) lateral offset of any Council stormwater drainage asset.

Typically, the following works will require a Build Over Easement application:

- i) Removable Garage/Shed
- ii) Carport
- iii) Eaves (minimum height clearance of 2.7m)
- iv) Unenclosed Verandah, Pergola and Gazebo
- v) Decking/Stairs/Landings
- vi) Fences including Swimming Pool Safety Barriers
- vii) Earthworks/Retaining Wall
- viii) Driveways (serving more than single property)
- ix) Rain Water Tanks (greater than 3 kL).

## 2.6 Prohibited Structures and Works

Consent to build over an easement will not be granted for a 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.

Typically, Council does not allow the following to be built over an easement:

- i) Habitable Rooms/Class 1 Buildings
- ii) Basements or Underground Structures i.e. Underground Rainwater Tank
- iii) Swimming Pool/Spa
- iv) Sheds and Garages with greater than 6 metres in length along the easement
- v) Structures to be built over an easement containing Council drainage assets equal to/greater than 450mm in diameter.

## 2.7 No Consent or Application Required

Typically, the following items are exempt from build over easement approval requirements:

- i) Internal driveway generally of minor construction serving one (1) dwelling
- ii) Paling property fencing
- iii) Landscape components i.e. minor plantings and removable garden beds, minor paving, and paths. Council does not encourage the planting of vegetation over or near easements and Council assets as root masses could cause damage and blockage to drains.
- iv) Light weight / removable structures or temporary items i.e. trampoline, BBQ, Aviary
- v) Rainwater tanks (less than or equal 3kL)

## 2.8 Design Requirements

The following requirements apply when building over an easement or within 1 metre of Council drainage assets.

### 2.8.1 Structures and Works Over Easement

Structures to be built over must be readily demountable, constructed of lightweight materials and be able to be manually dismantled and removed from their current position. The structures must be independently supported from any adjacent dwelling or other permanent structure.

### 2.8.2 Clearance and Access

Works must not cover stormwater access pits and have a minimum clear clearance of 1 metre offset from the outside edge of the stormwater pit. Stormwater access pits must be adjusted to finished surface level.

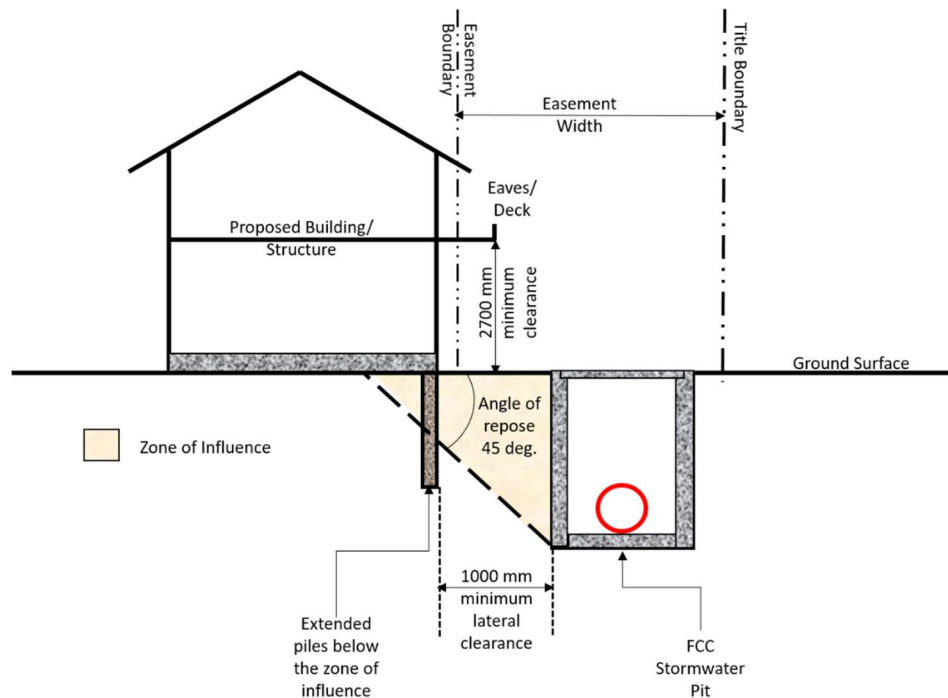


Figure 2: Clearance requirements for stormwater pit/manholes

### 2.8.3 Footing Requirements

- Footings must not place additional load on Council stormwater drainage assets.
- Footings where possible must not encroach within the easement.
- It is preferable to maintain a minimum offset of 600mm from the outside edge of the drain. Where a pier footing is located adjacent to the property boundary a minimum of 300mm from the outside edge of the drain is required.
- Footings where constructed within the easement or 1m from the edge of pipe must extend below the depth of pipe, otherwise footings must extend to a depth below the zone of influence of the stormwater asset. The zone of influence extends to the ground surface at an incline equal to the angle of repose.

- Strip footings are not permitted. Pad footings (bored pier and beam) are supported within easements.

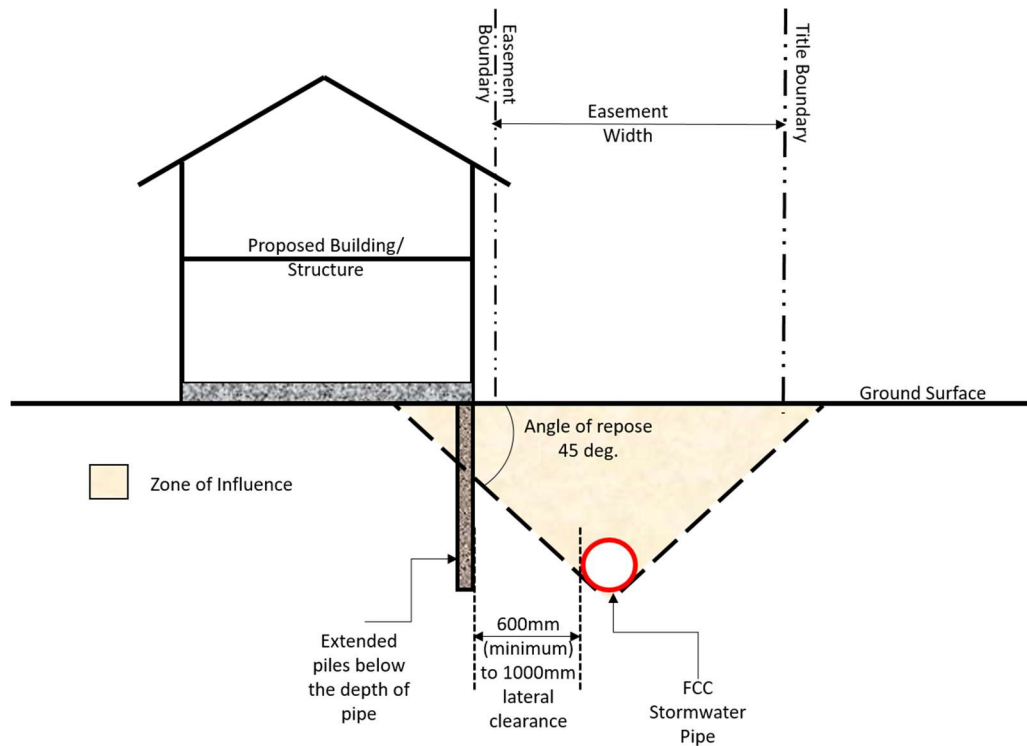


Figure 3: Section through building and stormwater pipe ( $600\text{mm} < \text{lateral clearance} < 1000\text{mm}$ )

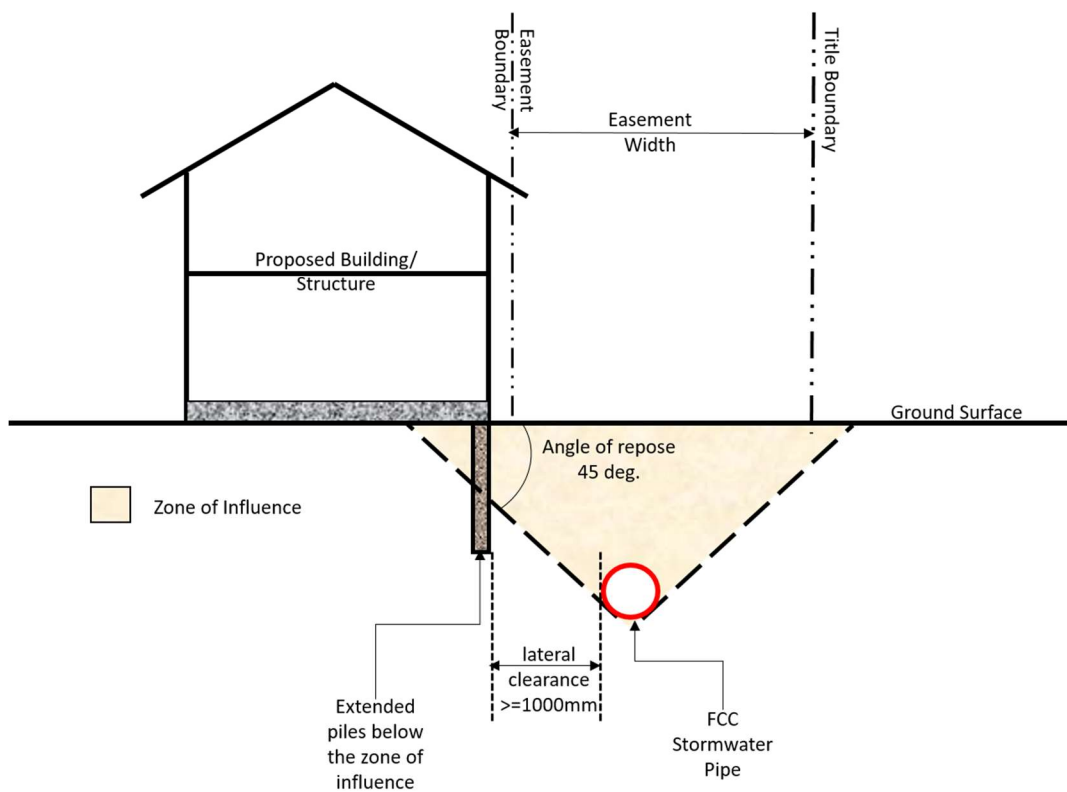


Figure 4: Section through building and stormwater pipe ( $\text{lateral clearance} \geq 1000\text{mm}$ )

### 2.8.4 Earthworks

When carrying out earthworks (or cut/fill works) over an easement of within 1 metre of a stormwater asset, the following must be observed:

- There must be minimum of 600mm vertical cover maintained over all stormwater pipes unless otherwise approved by Council.
- The maximum depth of additional fill over a stormwater pipe must not exceed 300mm unless otherwise approved by Council.
- Earthworks must not undermine an asset by excavating below the angle of repose cast by the asset or pipe.
- Any pit affected must be adjusted to match the new surface level to Council standards and specifications.

## 3. Assessment Process

### 3.1 Prior to Application

Prior to applying for Build Over Easement approval, the following steps are recommended:

1. Establish whether the proposed structure or works will be located over an easement or within one (1) metre of Council assets prior to the design of the proposed structure.
2. It is recommended that the applicant investigate and confirm the actual location of drainage assets prior to lodging the application. Request a Stormwater asset plan from Council to determine pipe size, depth and offset.
3. Ensure the proposal complies with all Build Over Easement requirements contained within the policy.
4. Lodge a Build Over Easement application form to the Frankston City Council at <https://www.frankston.vic.gov.au/Planning-and-Building/Roads-and-Infrastructure/Infrastructure-permits-and-applications/Apply-to-build-over-an-easement> along with the following:

- i) The application fee
- ii) The current certificate of title including the plan of subdivision
- iii) A set of plans which must include:
  - A site plan of the entire lot to an appropriate scale showing north point, all boundaries to adjoining properties, easements and location of all underground assets,
  - All existing buildings and the proposed works are to be clearly defined with offsets as applicable,
  - Levels preferably to the Australian Height Datum (AHD),
  - Footing details with cross sections through and along the easement or asset being built over,
  - Certified structural details and computations may be required upon request,
  - CCTV footage requirement for build over easement with pipes or assets in some cases defined or at the discretion of the Council, and



- Internal drainage plan with connection to stormwater point of discharge (if known).

### 3.2 Assessment

The assessment timeframe for Build Over Easement is generally up to 10 Business days. This processing time is subject to the complexity of the application and Council being in receipt of all required information. ie. CCTV assessment (if required).

Approval to build over the drainage easement may be granted, subject to standard conditions for Council approval to build over an easement and/or drainage line are detailed in application form to be adhered and all associated costs borne by the applicant.

### 3.3 Condition for Consent

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

## 4. Definitions

<b>Angle of repose</b>	means the steepest angle at which loose material such as soil will remain stable. This defines the zone of influence around a buried pipe.
<b>Class 1 buildings</b>	means domestic or residential buildings – single, standalone single houses and horizontally attached houses, such as terrace houses, row houses or townhouses.
<b>Council</b>	means Frankston City Council.
<b>Easement</b>	means a designated area of land, registered on the land title that allows Councils and other nominated authorities or agencies, the legal right to use and/or provide access rights to your property.
<b>Footing</b>	means the below-ground supporting part of a structure.
<b>Stormwater asset</b>	means stormwater drainage pits and pipes owned by Frankston City Council.
<b>Zone of influence</b>	means the region around a buried stormwater drainage asset, defined by the angle of repose that determines the minimum depth of any footings proposed near the asset.