

Build Over Easement Policy

Purpose

The purpose of this policy is to guide the community and Council in establishing the conditions and process for the construction of buildings or works over Council vested or implied drainage easements.

The intent of the policy is to allow the building of minor structures over easements in line with Council's Build Over Easement Guidelines and as per regulations under the *Water Act 1989* which prohibit the building of substantial structures or fill, which would compromise Council's ability to provide and maintain an appropriate stormwater network.

Scope

This policy applies to Council, property owners, and developers to aid in preserving the integrity of Council maintained easements.

Policy Number

MSC 007

Directorate

Economy, Growth and Infrastructure

Owner

Manager Planning and Engineering

Coordinator Engineering, Transport and Subdivisions

Date Endorsed

July 2024

Renewal Date

July 2025

Authorised

Council adopted

Policy

In most instances easement restrictions are placed on a parcel of land at the time of subdivision to facilitate provision of services by service authorities. These easements are vested in the appropriate bodies and are recorded on the title of the property.

Notwithstanding this, easements can also be implied by the presence of service assets. Within these easements the landowner has the use of the land as long as such use does not interfere with service provision and operational requirements of the service authorities.

The objectives of the Policy are:

- To provide a consistent response to applications from landowners to build structures over easements vested in Council.
- To ensure Council's ability to access, maintain, provide and improve infrastructure service provisions within the easement if and when required.
- To protect Council against incurring any cost due to structures or fill placed over an easement.
- To have a process that ensures prospective new owners of the land are aware of the specific conditions with regard to Council rights to access of the easement.
- To ensure Council's Build Over Easement Guidelines are met and adhered to.

Responsibilities

The Council is responsible for ensuring the integrity of Council's easements are maintained to a high standard.

Definitions

Definition	Explanation
Easement	A right to cross or otherwise use someone else's land for a specified purpose.
Implied Easement	An easement is implied if a service asset owned by a service authority or Local Government (such as a drainage line) is actually in place and yet not contained within a vested easement on the land. The same rights and regulations apply as for an easement.

Applicable Legislation and Regulation

- Build Over Easement Guidelines 2015
- *Water Act 1989*
- *Local Government Act 1989 and 2020*
- *Building Regulations 2006*

Overarching Governance Principles

The development of this Policy considered the *Local Government Act 2020's* Overarching Governance Principles and the following were applied:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Lawful | <input type="checkbox"/> Community engagement | <input type="checkbox"/> Financially viable |
| <input checked="" type="checkbox"/> Best community outcome | <input type="checkbox"/> Innovation and improvement | <input type="checkbox"/> Consistent with government plans |
| <input type="checkbox"/> Sustainable | <input type="checkbox"/> Collaboration with government bodies | <input checked="" type="checkbox"/> Transparent |

Climate Change, Gender Equality, Human Rights and Child Safe Compliance

This Policy has considered and complies with the human rights and responsibilities contained in the Charter of Human Rights and Responsibilities Act 2006 (Vic), Gender Equality Act 2020, Climate Change Act 2017 and the Commission for Children and Young People Child Safe Standards.

Revision History

Version	Authorised by	Authorisation Date	Regulatory Policy
#1	Council adopted	20 April 2015	Yes
#2	ELT approved Template updated	July 2024	Yes