

# BUILD OVER EASEMENT GUIDELINES

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**Yarra Ranges Council**

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PURPOSE.....	2
DEFINITIONS.....	2
WHAT IS A BUILD OVER? .....	3
WHAT CAN BE PLACED OVER AN EASEMENT OR COUNCIL ASSET?.....	5
WHAT CANNOT BE PLACED OVER AN EASEMENT OR COUNCIL ASSET?.....	8
APPLCATION PROCESS.....	9
Appendix A.....	<b>Error! Bookmark not defined.</b>
Appendix B.....	<b>Error! Bookmark not defined.</b>

## PURPOSE

The following guideline aims to protect Council drainage assets and clarify to applicants which structures are appropriate to build over or near a council easement.

## DEFINITIONS

**Angle of Repose:** the angle of maximum slope at which a heap of any loose solid material (as earth) will stand without sliding. It is relevant to understand if the loads of a structure over or in the soil will affect/damage the assets nearby.

**Council:** Yarra Ranges Council

**Easement:** Section of land registered in a private property that gives nominated authorities access right to the land.

**Footing:** Below – ground supporting part of the structure.

**Offset:** Used to describe the distance of an asset to a specified boundary line.

## WHAT IS A BUILD OVER?

A build over is when a property owner plans to build or place a structure on, near or above an easement or drain. A build over cannot be performed without Council's consent in the form of a Build Over Agreement.

A Build Over Agreement, is a legally binding document entered into between Yarra Ranges Council and the property owner that protects Yarra Ranges Council continuous rights of access to the easement if the build over is approved.

You must get consent from Council to build over an easement that is vested in Council. But other Agencies or Authorities such as Power, Gas and Water Corporations, may also have an interest in the easement. If so, you must also get consent from each of the interested Agencies or Authorities.

## WHAT IS AN EASEMENT?

An easement is a section of land registered on your Property Title that gives Council, or other nominated agencies or authorities, access rights through your property. Council will typically use these access rights for the installation and maintenance of essential drainage infrastructure.

An easement will most commonly be situated along a property boundary, but it can be anywhere on your property. Many easements will already contain essential services providing:

- Storm water drainage;
- Sewerage;
- Water supply, power, gas or telecommunications infrastructure;
- Overland flow paths for storm flows;
- Right of way for vehicles or pedestrians; and
- Reserves for overhead power lines.

Easements vary in width depending on their intended function and the type of assets that are contained within them. A typical width for a drainage easement is between 1.8 - 3.0m. However wider and narrow widths are not uncommon and a flood way easement can be much wider.

Easements should appear on a copy of your properties certificate of title, although in some instances where an asset exists in the ground and no easement exists on title, an implied easement will exist.

If there is a Council easement or drain within your property, Council may need to:

- Access your property to inspect a drain
- Undertake maintenance works on a drain, normally via a stormwater pit
- Excavate within the easement to uncover a drain
- Renew a drain if is damaged beyond repair
- Upgrade a drain and make it bigger (if there are attributable flooding or pipe capacity issues)
- Direct a property owner to remove any illegal structures or works over an easement

## **WHAT IS AN IMPLIED EASEMENT?**

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If a Council Drain has been constructed within your property and there are no easements on your title, an Implied Easement exists around the drain. Implied Easements are described in Section 148 of the Water Act 1989. This State Government Legislation states:

“... no structure can be built, or any filling placed, within one meter laterally of any works of the Relevant Authority without permission from the Relevant Authority. An implied easement is enforced where there is no easement reserved on the property title and provides the same level of protection and rights of access for maintenance purposes as an easement on title.”

Thus, regardless of whether the drain has been constructed within an easement, Council has the same rights of access to its assets for maintenance and operations, and Council must approve of any proposed works near or over its drain.

## **OVERLAND FLOW**

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If a Council drain reaches its capacity during a significant storm event, the water may surcharge from the drainage system (typically at a drainage pit) and run overland. Given easements often follow the natural contours of the land, many drainage easements also act as overland flow paths. These easements need to remain clear of obstructions to allow for unhindered flow of stormwater.

## WHAT CAN BE PLACED OVER AN EASEMENT OR COUNCIL ASSET?

The type structure or works that can be placed on an easement often depends on the requirements of the easement itself. The following diagrams are provided as a guide to what may or may not be constructed over an easement:



Council will not give approval to place a permanent structure over an existing Council drainage system or over an easement that is likely to be required for future drainage works. Permanent structures are also not permitted in easements that provide overland flow paths for storm water.

Applications involving proposed works of a temporary nature will be considered on their individual merits. Temporary works are works that can be easily removed from the easement should access be required. There are several factors that may affect each proposal.

These include:

- Ground conditions;
- Clearance from foundations;
- Drainage pipe type, size, condition and age;
- The location of stormwater overland flow paths;
- Clearance to the proposed structure; and
- The potential loads impacting on Council's assets.

### 5.1 Types of Structures or Works that May be Considered for Build Over Approval

Council has categorised potential structures into 3 types:

- Type 1 – Minor Structures (Things that can be easily removed);
- Type 2 – Minor Structures (Things that be removed with a bit of effort); and
- Type 3 – Permanent Structures (Things which cannot be removed without substantial effort or may need to be demolished in order to access the asset or easement).

Examples of the types of structures or works that fall into these individual categories are outlined below:

#### PLEASE NOTE:

Irrespective of the category, no structure or works will be permitted on, over or within **1.0m** of an Access Pit or Manhole.

## **5.2 TYPE 1 STRUCTURES OR WORKS:**

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- Rainwater tanks with a maximum storage volume of 2000 litres and with a maximum footprint of 2m<sup>2</sup> (Excludes in ground tanks);
- Garden or storage sheds with a maximum footprint of 3m<sup>2</sup>; and
- Reinforced concrete paving with a maximum thickness of 100mm in quantities smaller than 5m<sup>2</sup>.

Applicants will also need to consider if the proposed structure will impede overland storm water flows or adversely impact on flood levels. Approval will be subject to a flood assessment of the property.

## **5.3 TYPE 2 STRUCTURES OR WORKS**

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- Rainwater tanks with a maximum storage volume greater than 2000 litres (Excludes in- ground tanks.);
- Garden or storage sheds with a maximum footprint of 15m<sup>2</sup> with or without a reinforced concrete base slab of maximum thickness of 100mm;
- Reinforced (non-structural) concrete paving with a maximum thickness of 100mm in quantities greater than 5m<sup>2</sup>.
- If approved, a minimum cover of 600mm over the drainage asset is to be maintained with pit covers to match new surface levels. Works are to be undertaken under Council supervision and at the owners' expense;
- Stand alone or detachable structures with a maximum roof area of 50m<sup>2</sup> including carports, pergolas, verandas, gazebos and decking.
- If approved, the footing plan must comply with Appendix A of these guidelines;
- Carports must have structurally independent roof if adjacent to or attached to a dwelling and must be open on a minimum of two sides;
- The vertical height from the surface level to the underside of the overlying structure of the Carport must be a minimum 2.7m.
- Above ground swimming pools.
- Although many above ground swimming pool are demountable, they can exert tremendous loadings on the soils below them. Approval of these structures will therefore be at the discretion of Council.
- Applicants will also need to consider if the proposed structure will impede overland storm water flows or adversely impact on flood levels. Approval will be subject to a flood assessment of the property.

## **TYPE 3 STRUCTURES OR WORKS**

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- Garages (attached or standalone);
- Garages are to be provided with a structurally independent roof when attached to a dwelling.
- Brick or masonry walls;
- Structural footings and ground slabs;
- In-ground swimming pools;
- Structural or landscaping retaining walls;
- Eaves;
- If the proposed eave is 600mm or less from the edge of the drainage asset or over the easement, a minimum height clearance of 2.7m is required.

- Earthworks (Fill) to a maximum of 500mm.
- Where fill is placed over an easement, existing pits/manholes must be modified to match new surface levels. These works must be undertaken under Council supervision and at the owners' expense.

In all proposals, footing plans must comply with Appendix A of these guidelines.

Type 3 structures and works will not be approved over existing drainage assets, or over easements which are likely to be required for the construction of future drainage assets. Approval will also be subject to a flood assessment of the property.



## WHAT CANNOT BE PLACED OVER AN EASEMENT OR COUNCIL ASSET?

### **6.1 WHAT CAN NOT BE PLACED OVER AN EASEMENT OR COUNCIL ASSET?**

The following structures or works will not be approved;

- In-ground storage tanks
- Habitable Rooms
- Warehouse or Industrial/Commercial Buildings
- Excavation within an easement

Furthermore, see appendix A and B for more details.

## APPLICATION PROCESS

### APPLICATION PROCESS

#### Pre-Application

Prior to designing any structure or carrying out works, establish whether the proposed structure or works will be located over an easement or within 1.0 metre of a drainage asset.

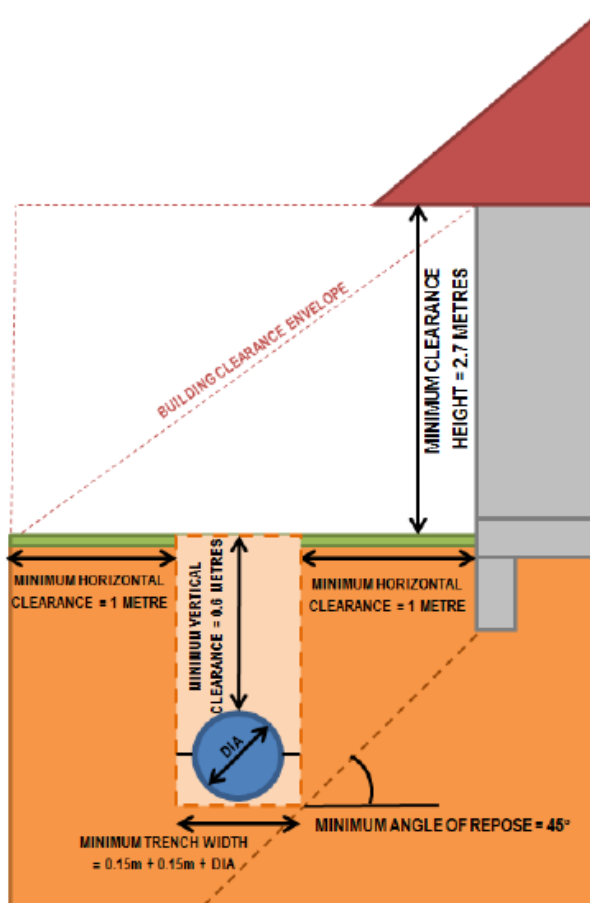
- Confirm the actual location (depth and offset) of drainage assets prior to lodging an application. It is the applicant's responsibility to assess this information onsite.
- Refer to the requirements under Appendix A and B contained within this document to confirm if the proposed works comply.
- Lodge an application form to Yarra Ranges Council along with:

#### The applicable application fee;

The current certificate of title including the plan of subdivision; and c. A set of building plans indicating:

The location of the proposed works on the site;

- Details of the structure or works to be built;
- Footing details (if applicable); and
- Cross sections through and along the easement or asset being built over (see image below).



FOOTING AND OVERHEAD CLEARANCE ENVELOPE.

Application link: <https://www.yarraranges.vic.gov.au/Development/Applications-permits-and-certificates/Apply-to-build-over-an-easement>

### **Council Assessment (20 days)**

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Submission of an application does not constitute approval. Each application is subject to assessment on its own merits. Amendments may be sent after Council's assessment at no extra charge. Refunds ARE NOT granted for rejected applications.

1. Council will assess the documents provided. If these are not enough to make an assessment you may be asked to provide additional information.
2. If the proposal meets the requirements set out in these guidelines, a pre-approval letter will set sent to you along with Councils standard conditions of approval for works within an easement. If the proposal does not meet the requirements of these guidelines, the application

## Appendix A

Any Asset in Easement	Proposed Structure	Council Consent	Conditions
No drain	Dwelling	Will not be approved	Council to assess if the easement will be used in the future. Assessment will be based on both overland and underground potential use. If the easement is not required, it must be expunged so that a structure can be lawfully placed under the Water Act 1989.
	Granny flat	Will not be approved	
	Garage	Will not be approved	
	Swimming pool / Spa	Will not be approved	
	Swimming pool pump equipment	Will not be approved	
	Cut	Will not be approved	
	Fill	Required, under conditions	No pit lid access points to be covered as part of works.
	Retaining walls	Required, under conditions	To be either on the boundary line or easement line and must meet the requirements referenced in appendix A & B. Design must prevent any cut/fill within the easement.
	Veranda, Gazebo, Shade Sail	Required, under conditions	Footings to be either on boundary line or on easement line, not in the middle of easement or above existing pipes. Structure to be easily removable without the use of machinery.
	Deck	Required, under conditions	Footings to be either on boundary line or on easement line, not in the middle of easement or above existing pipes. Structure to be easily removable without the use of machinery.
	Carport	Required, under conditions	To be constructed with slab on ground. No foundations allowed within easement. Structure to be easily removable without the use of machinery.

	Driveway	Required, under conditions	Construction joint required along easement line.
	Water tanks	Required, under conditions	Water tanks to be situated on pavers. Structure to be easily removable without the use of machinery.
	Building Eaves	Required, under conditions	Eaves to be at a minimum 2.7m above ground level.
	Pool fence	Required, under conditions	Footings to be either on boundary line or on easement line, not in the middle of easement or above existing pipes. Structure to be easily removable without the use of machinery.
	Paling Fence	Required, under conditions	
	Sheds	Required if roofed area equal or greater than 6m <sup>2</sup>	Sheds to either be situated on removable pavers or constructed with slab on ground.
	Landscaping	Required if planter box area equal or greater than 3.5m <sup>2</sup>	Trees to be avoided. Trees with deep roots will not be permitted.
	Paving	Required if area equal or greater than 10m <sup>2</sup>	Construction joint required along easement line.
Council pit	All Works	Required, under conditions	1 metre clearance required around and Council stormwater pit. Pit must remain accessible from easement with no structure or fill enclosed or above the access point.

## Appendix B

Any Asset in Easement	Proposed Structure	Council Consent	Conditions
Stormwater drain	Dwelling	Will not be approved	
	Granny flat	Will not be approved	
	Garage	Will not be approved	
	Swimming pool / Spa	Will not be approved	
	Swimming pool pump equipment	Will not be approved	
	Cut	Will not be approved	
	Fill	Required, under conditions	Minimum 400mm cover to overt (top) of pipe. No pit lid access points to be covered as part of works.
	Retaining walls	Required, under conditions	Footings to be either on the boundary line or easement line. Design must prevent any cut/fill within the easement. Design must ensure protection of Council drain with an angle of repose assessment shown on the plans.
	Veranda, Gazebo, Shade Sail	Required, under conditions	Footings to be either on boundary line or on easement line, not in the middle of easement or above existing pipes. Structure to be easily removable without the use of machinery.
Deck	Required, under conditions	Design must ensure protection of Council drain with an angle of repose assessment shown on the plans.	

	Carport	Required, under conditions	To be constructed with slab on ground, with a construction joint along the easement line. No foundations allowed within easement. Structure to be easily removable without the use of machinery.
	Driveway	Required, under conditions	Construction joint required along easement line.
	Water tanks	Required, under conditions	Water tanks to be situated on pavers. Structure to be easily removable without the use of machinery.
	Building Eaves	Required, under conditions	Eaves to be at a minimum 2.7m above ground level.
	Pool fence	Required, under conditions	Footings to be either on boundary line or on easement line, not in the middle of easement or above existing pipes.
	Paling Fence	Required, under conditions	All footings designs must ensure protection of Council drain with an angle of repose assessment shown on the plans. Structure to be easily removable without the use of machinery.
	Sheds	Required if roofed area equal or greater than 6m <sup>2</sup>	Sheds to either be situated on removable pavers or constructed with slab on ground (with a construction joint along easement line).
	Landscaping	Required if planter box area equal or greater than 3.5m <sup>2</sup>	Trees to be avoided. Trees with deep roots will not be permitted.
	Paving	Required if area equal or greater than 10m <sup>2</sup>	Construction joint required along easement line.