

BUILDING OVER EASEMENTS AND/OR COUNCIL'S DRAINS OR BUILD WITHIN 1.0M Laterally TO Council's Drains (19/1255196)

When is this application required?

- Building of a structure over a drainage easement. (Building Regulations 2018)
- Building of a structure over an existing Council drain or within 1.0m laterally of an existing Council drain. (Local Government Act 1989 and Council's Community Local Law 2019)
- Building a structure over an overland flow path. (Local Government Act 1989 and Council's Community Local Law 2019)

What is an easement?

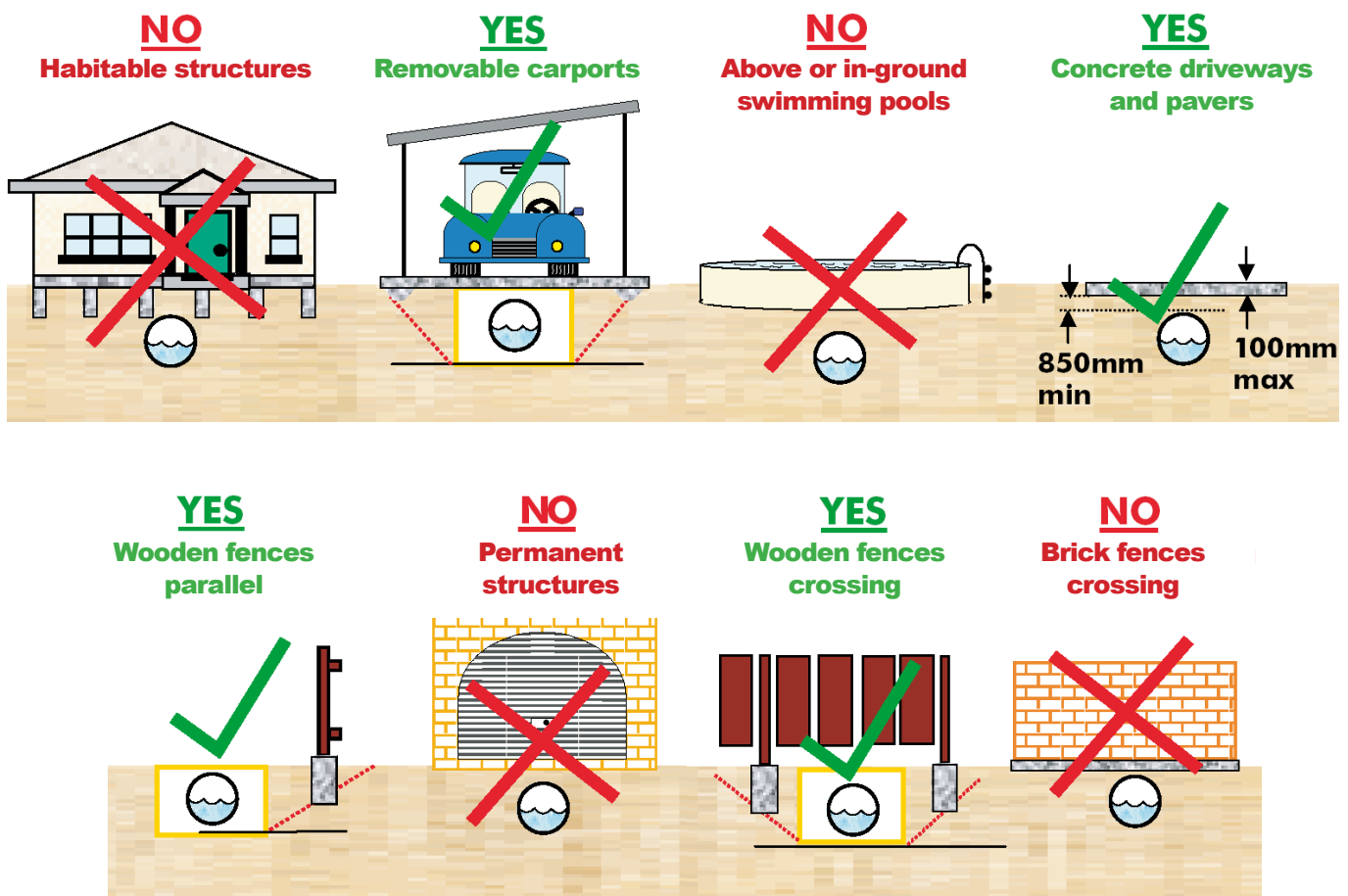
An easement is a section of land registered on the Certificate of Title providing Council (or other parties) a right of access for constructing a new drain; maintaining, upgrading an existing drain; or installing a new drain. Easements are also used to provide overland flow paths for stormwater runoff.

A stormwater drain may already be located within the easement. It could be a Council drain or a private drain serving other properties that also have rights to use and access the easement. Access to an easement will also be important in cases where no drain currently exists but could be required.

Easements can be for other purposes such as carriageway and may provide rights to other authorities and property owners.

What can I put over an easement?

Council's Policy 8.9 Protection of Drainage Assets and Easements (31 August 2010) provides direction about whether and how a building or structure over an easement and/or Council's drains or within 1.0m laterally to Council's drains may be permitted. The following drawings provide general guidance as to what may be permitted over an easement:



Thinking of erecting a building or structure over the easement and/or Council's drains or build within 1.0m laterally to Council's drain?

Building is a term that is defined in the *Building Act 1993*. Regulation 130 of the Building Regulations 2018 requires the report and consent of Council, prior to building over an easement.

A structure is defined as any structure or earthworks and includes, but is not limited to:

- Buildings as defined in the *Building Act 1993*.
- Structures such as swimming pools, garden sheds, ornamental pools, walls, pergolas, decking, driveways, paving, fences, cubby houses, poles, signs, hot water services etc.

You can contact Council's Engineering Assets Department on 9524 3333, to ask whether you need to obtain consent to erect your proposed building or structure over an easement and/or Council's drains or build within 1.0m laterally to Council's drain.

How long does it take to process the application?

An application is processed within 10 working days of Council receiving the application form and all the required and completed information.

In case a Section 173 Agreement is to be entered into and if the applicant advises Council to prepare this agreement, then approximately eight to 12 weeks (subject to variations), is required for processing.

There is a drain in my property but no easement. What do I do?

Please contact Council's Engineering Assets Department on 9524 3333. If it is a Council stormwater drain you should treat it as if there was an easement and apply for consent.

Council has powers to protect its drains, even if they are not protected by an easement.

What is a Section 173 Agreement?

It is an agreement that according to Section 173 of the *Planning and Environment Act 1987*, permits a responsible authority to enter into, with an owner of land. Such agreements are registered by the Registrar of Titles and are binding on successive owners of the land.

Why is a Section 173 Agreement required?

A Section 173 Agreement benefits both the property owner and Council. It records that Council has given consent for a specific building or structure to be built over an easement and/or Council's drains or build within 1.0m laterally to Council's drain with all the conditions.

As the ownership of a property may change during the life of the building or structure, Council needs an agreement that can be transferred to and is binding with future owners of the property. Hence, a Section 173 Agreement is registered on the Certificate of Title.

Who prepares this Section 173 Agreement?

Solicitors nominated by Council will prepare the Section 173 Agreement after the following has occurred:

- the applicant has been advised that the application is approved and consent will be given;
- the applicant pays for the cost of preparing and registering the agreement; and
- the property owner agrees to all conditions being included in the agreement.

Council will issue a permit after the agreement has been registered on the Certificate of Title.

Can I start the works while the Section 173 Agreement is being prepared?

No, you can only start work once you have received a permit from Council. The permit may be in the form of a letter of approval from Council.

Where a Section 173 Agreement is required, it must be lodged at the Land Registry and registered on title in a dealing number before Council will issue a permit for the application.