

Easement Encroachments



Last Updated: 26/07/2018

What is an Easement Encroachment?

An Easement Encroachment refers to any building work or structures proposed above, or below the ground where a Council drainage easement exists which has the potential to affect the ongoing operation or maintenance of Council drainage systems. These systems could comprise of either underground drainage pipes, or overland surface stormwater flow paths and potentially cause harm to the public.

Schedule 6 of The Real Property Act 1886 explains that an easement in favour of Council for drainage purposes provides Council with:

“the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining drains or drainage pipes and of using and maintaining those drains and drainage pipes for drainage purposes and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.”

If Council consider that the proposed Easement Encroachment will unreasonably affect the operation or maintenance of a Council stormwater drainage system, or hinder / cause hazard for pedestrians or motorists, it is unlikely that the proposed Easement Encroachment will be approved by Council.

Details regarding the location, type, and dimensions of any Easements can be obtained from the Certificate of Title and Deposited (or Filed) Plan available from the Lands Titles Office, or sailis.sa.gov.au website (fees may apply).

Council have specific requirements which must be met in order for Council to support a proposed Easement Encroachment. The information provided below helps to outline those requirements and provide further clarification regarding the minimum level of information that must be provided to Council when submitting an Easement Encroachment Application.

Examples of Easement Encroachment where approval is required:

- Brick fences
- Earthworks (cut or fill > 0.5m)
- Carports
- Carparks & access roads
- Timber decking
- Retaining walls
- Verandas and Pergolas
- Commercial signage (with footings)
- Permanent structures

Examples of Easement Encroachment where approval is not required:

- Residential driveways
- Minor landscaping
- Rainwater tanks
- Garden sheds (<10sqm)
- Some types of paving
- Relocatable play equipment

Examples of Easement Encroachment that will not be approved by Council:

- Dwellings
- Warehouses
- Garages
- Large sheds (> 10sqm)
- Swimming pools and spas
- Tennis courts
- Retaining / brick walls
- Permanent structures
- Major earthworks
- Development that restricts the flow of stormwater over the easement
- Development which unreasonably restricts access to Council stormwater assets

Applying to Encroach over an Easement

If proposing to Encroach over a Council easement, Council approval may be required. It is important that Council are provided with all of the necessary information they require so that an assessment of the proposed Easement Encroachment can be undertaken.

To prepare the necessary information, the Applicant will need to engage the services of a suitably experienced Civil Engineer, Building Designer or Architect. An Engineering Surveyor may also be required where existing site levels or boundary information is unknown.

In cases where Council has the information, Council may be able to assist by providing the Applicant with an approximate depth and size of stormwater assets within the easement, along with confirming if the Easement acts as an overland flow path for surface stormwater runoff. It is recommended that Applicants first contact Council to confirm this information, and to confirm if Council is supportive of their proposal, prior to submitting the Easement Encroachment Application to Council.

For an Easement Encroachment to be approved by Council, the Applicant must successfully demonstrate the following:

- That the proposed encroachment is essential part of the overall development.
- That there is no other viable location for the proposed encroachment to be located.
- That the proposed encroachment will not pose any long-term, drainage, maintenance or access issues for Council.
- Ensure all of the technical requirements prescribed in Table 1 "*Easement Encroachment Technical Requirements Checklist*" have been met.

Failure to satisfy any of the above requirement will likely result in the Application being refused by Council.

Easement Encroachment Applications should be submitted with, or prior to lodging a Development Approval Application. Once the necessary documentation has been prepared by the Applicant, the Easement Encroachment Application Form and supporting documentation should be submitted to Council's City Assets Department for assessment.

In addition to any Council requirements or conditions, Applicants must also ensure that all other necessary approvals are obtained from other authorities, or stakeholders who have legal rights or easements within upon the subject land.

Council reserves the right to refuse Easement Encroachment Applications. To discuss the information contained within this guide, please contact Council's City Assets Department on 8405 6600.

Easement Encroachment Technical Requirements

The following technical requirements shall be met prior to lodging an Easement Encroachment Application. Failure to satisfy any of these requirements will result in the Application being refused by Council.

Table 1: Easement Encroachment Technical Requirements Checklist

General:	
<input type="checkbox"/>	1. Details regarding the size, location, and invert level of existing infrastructure within the easement shall be confirmed on site, or provided by Council. Evidence of this will need to be provided to Council.
<input type="checkbox"/>	2. Where stormwater drains in the easement are: 225mm diameter or smaller: The Applicant or the Applicants Engineer must demonstrate that Council can be provided with unrestricted access to the easement, to allow for hand held construction and maintenance equipment (e.g. wheel burrow, bobcat). 300mm diameter or larger: The Applicant or the Applicants Engineer must demonstrate that Council can be provided with unrestricted access to the easement, to allow for heavy construction and maintenance, vehicles and equipment (e.g. front end loader).
<input type="checkbox"/>	3. The Applicant must provide justification in writing that the proposed encroachment is an essential part to the development and there is no other viable location for the proposed encroachment.
<input type="checkbox"/>	4. The Applicant can to demonstrate to Council that the proposed encroachment can be easily dismantled within 28 days if requested to do so by Council (at the Land Owners cost).
To be completed by Building Designer or Architect:	
<input type="checkbox"/>	5. Floor plans and elevations for the proposed encroachment.
<input type="checkbox"/>	6. A site plan (drawn to scale) which: <ul style="list-style-type: none"> • Documents all allotment and easement boundary dimensions (this information can be obtained from the Deposited (or Filed) Plan, available from the Lands Titles Office, or SAILIS website (fees may apply). • Indicates the proposed encroachment setback dimensions in relation to allotment and easement boundaries.
<input type="checkbox"/>	7. The architectural design shall ensure that the minimum opening height of any proposed structures (e.g. carports or verandas) at any point is no less than 2.0 metres to provide unrestricted access for Council over the easement.
To be completed by Civil Engineer:	
General	
<input type="checkbox"/>	8. It has been confirmed whether or not the easement acts as an overland flow path for surface stormwater flows.
<input type="checkbox"/>	9. If the easement acts as an overland flow path for surface stormwater flows, the Engineer has completed the necessary calculations (e.g. flow capacity check) to demonstrate to Council that the proposed encroachment will not restrict the flow of stormwater over the easement.
Siteworks Design	
<input type="checkbox"/>	10. Existing site survey information is included on an Engineering Siteworks Plan which provides details of existing surface levels taken to Australian Height Datum (AHD) and any existing site features.
<input type="checkbox"/>	11. Design surface levels are provided to Australian Height Datum (AHD).
<input type="checkbox"/>	12. Details regarding the size, location, and invert level of existing infrastructure within the easement have been included on an Engineering Siteworks Plan.
<input type="checkbox"/>	13. The depth of fill above existing stormwater pipes within the easement is maintained between 0.6m to 2.0m (unless otherwise approved by Council).

- 14. Details are provided regarding proposed surface finishes within the easement. Proposed surface finishes shall comprise only; clean fill, compacted rubble, removable block pavers, or lawn (unless otherwise approved by Council).
- 15. The design ensures that no modifications are required to Council assets, or restrict access to any existing manhole covers (or other similar) within the easement.

Footing Design

- 16. A footing design and plan has been prepared by a suitably qualified Civil Engineer who certifies that footings have been designed to withstand damage due to active lateral loads, and will not be undermined in the event that Council are required to excavate the full width of the easement, to the full depth of any assets located within the easement.
- 17. Details regarding the size, depth and location of proposed footing are provided.
Note: the design of footings within an easement must be specific to the site. Standard footings (e.g. pad footings typically adopted by shed manufacturers will not be accepted).
- 18. A minimum 0.6m horizontal clearance shall be provided between the edge of proposed footings and the edge of existing infrastructure within the easement.
- 19. The depth of proposed footings, on or adjacent the easement shall be designed and constructed to at least the same depth of existing underground infrastructure within the easement. The Engineer will need to confirm the invert level of the existing infrastructure within the easement to address this point.

To be provided by the Applicant:

- 20. A copy of the latest Certificate of Title and Deposited (or Filed) Plan is provided, available from the Lands Titles Office, or sailis.sa.gov.au website.

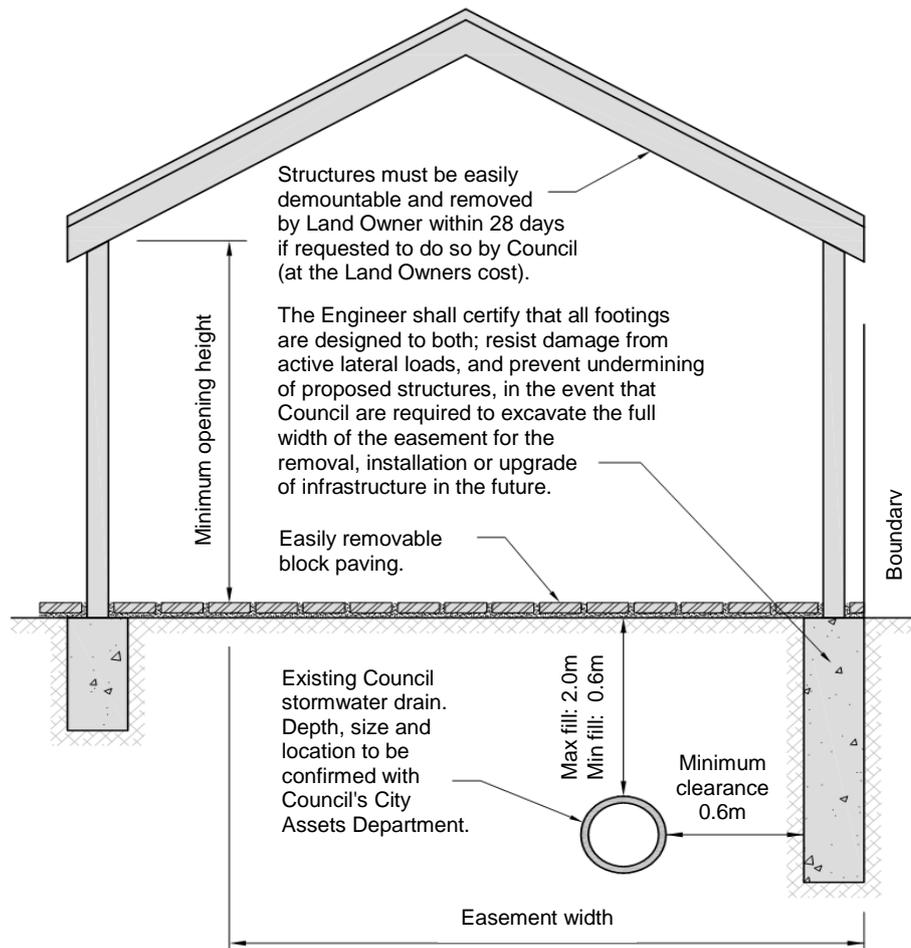


Figure 1: Easement Encroachment Diagram

Easement Encroachment Application Form

PART A – Applicant Details (must be the Land Owner)

Development Application
Number (If applicable)

Land Owners Name

Postal Address

Phone

Email

Site Address

Allotment

CT Volume

CT Folio

Deposited (or Filed) Plan Number

Submission Checklist:

- A copy of the latest Certificate of Title and Deposited (or Filed) Plan is provided, available from the Lands Titles Office, or sailis.sa.gov.au website.
- All of the technical requirements prescribed in Table 1 "*Easement Encroachment Technical Requirements Checklist*" have been met.

Conditions of Approval:

1. Council maintains the right to refuse any future Easement Encroachments at their discretion. Should additional works be proposed which are not indicated the Approved Plans which form part of this Application, additional approvals shall be sought from Council.
2. The Land Owner shall:
 - a) Take out and keep current a public risk insurance policy for at least \$20.0 million to protect against potential risks associated with the constructing, and maintaining the proposed easement encroachment on the land.
 - b) Ensure that all works are undertaken strictly in accordance with the approved plans and to the reasonable satisfaction of Council.
 - c) Ensure that the proposed building or structure remains easily dismantlable in the event that Council requires access to, or need to undertake works on the easement.
 - d) Ensure that the proposed structure will be dismantled within 28 days if requested to do so by Council.
 - e) Allow Council to dismantle all encroachments and commence work immediately in the event of an emergency.
 - f) Agrees to pay all costs associated with dismantling, storing and reconstructing the proposed encroachment or structure.
3. If structures are dismantled, the Land Owner shall ensure the easement remains clear of all obstructions until such time as the Council notifies the Land Owner that works are completed.
4. The Land Owner is aware and understands that the easement may be subject to stormwater flows frequently passing over the surface of the land, and will not seek damages from Council as a result of this occurring.

5. Accepting these conditions shall:
 - a) Indemnify Council from and against all actions, costs, claims and damages, which may be brought or claimed against the Council arising out of or in relation to the granting of this agreement.
 - b) Release Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring on, or to the easement land, infrastructure and any buildings, structures or improvements thereon.
6. Council reserves the right to refuse to allow the owner to reconstruct any building or structure built on the easement, regardless of whether or not approval for those structures had previously been granted by Council.
7. Any approvals granted by Council do not remove the Land Owner's responsibilities in ensuring all other permits or approvals are obtained from other relevant Authorities who may have rights within the easement. It is the Applicant's responsibility to ensure all necessary Approvals are obtained in addition to the Approval received from Council, prior to proceeding with works.
8. The Land Owner is aware that a copy of this Easement Encroachment Application Form and approved plans may be provided to the general public as part of any future Section 7 search undertaken for the subject land. In the event that the land is sold, the conditions of this approval will apply to the future Land Owner(s). Should the future Land Owner(s) not accept these conditions, any encroachments shall be removed within 3 months from the date of settlement. Failure to remove the encroachments implies that the future Land Owner has accepted these conditions.

Signature of Land Owner

I hereby acknowledge that I have read and understood all the conditions above and hereby agree to comply with them:

Land Owners Name

Signed

Date

PART B - Council to Complete

- Council's City Assets Department have reviewed the proposed design and hereby approve the proposed easement encroachment(s)
- The Land Owner shall contact Council's City Assets Department upon completion of works to organise an inspection of the works within 28 days of it being completed.

Signature of Authorised Council Officer

Council Officer

Signed

Date

A copy of this Easement Encroachment Application Form and approved plans should be included and form part of any stamped Development Approval documentation. It should also be provided as part of any future Section 7 searches.

ECONOMY • COMMUNITY • ENVIRONMENT • PLACEMAKING • LEADERSHIP

City of Port Adelaide Enfield • T (08) 8405 6600 • E service@cityofpae.sa.gov.au • www.cityofpae.sa.gov.au
Civic Centre 163 St Vincent Street Port Adelaide South Australia • PO Box 110 Port Adelaide SA 5015
Regional Offices Enfield Library - Council Office • Greenacres Library - Council Office