

Building Over Council Drain Policy



VERSION NO.	01
APPROVAL	Manager Infrastructure
	Signature: 
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RESPONSIBLE EXECUTIVE	General Manager Infrastructure and Open Space
POLICY TYPE	Operational
POLICY OWNER	Manager Infrastructure

REVISION RECORD	Version	Revision Description
New Policy		Previously covered under Building Over Easement Guideline. Removed and made as a policy as this function is not covered under the Building Regulations.

1. Purpose

This Policy instructs the process required for consent to build over or near a public drain owned by, vested in and under the management and control of Council located in a property and is not supported by a registered or recorded easement.

2. Scope

The Local Government Act 1989 (Vic) s198(1)(a) states:

*“(1) The following are vested in the Council and are under the management and control of the Council –
(a) Public sewers and drains within the municipal district;”*

When a Council drain is not supported by a registered or recorded easement in favour of Council, because it performs a public function, it is vested in and under the management and control of Council pursuant to section 198 of the Local Government Act 1989.

This Policy applies throughout the City of Kingston to residential and non-residential building work and developments.

3. Governance Principles and Council Plan alignment

3.1 Governance Principles

Principle (b) - priority is to be given to achieving the best outcomes for the municipal community, including future generations.

Principle (c) - the economic, social, and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.

Principle (g) - the ongoing financial viability of the Council is to be ensured.

3.2 Council Plan Alignment

Strategic Direction: Well-governed - Council will look after the community's financial resources responsibly and efficiently.

4. Policy Details

Council restricts and controls what can be built over or near a Council drain. This is so Council can:

- Access Council assets for maintenance, repair, replacement, or upgrade works.
- Avoid exposing Council and current or future property owners to excessive costs, liabilities, and risks where structures or items may require removal/replacement, stabilising structures or more expensive techniques needing to be adopted during renewal, upgrades, or maintenance works.
- Avoid compromising the integrity of the Council stormwater system or the surrounding structures and items due to construction works, asset failure or subsidence.

4.1 Council stormwater drain

Most public drains within the municipality of City of Kingston are owned, vested in and under the management and control of Council. It is not uncommon to have a Council stormwater drain, another authority's sewer asset or a private drain in a property not supported by a registered or recorded easement.

4.2 Is there a Council stormwater drain on my property?

If there is no registered easement on the property title or plan of subdivision, you can check if there are any Council assets by lodging a [Before You Dig Australia](#) (BYDA) online application to find out if any utility services or assets are present within the property and proposed works.

If a pipe is located during excavation works, stop work, and contact Council's Infrastructure department. A Council engineer will contact you within 5 working days and will determine if the pipe is Council's asset or a private drain.

4.3 Review your proposed structure

4.3.1 Permissible Structures / Works

Consent to build over or near a drain may be granted by Council, provided the submitted plans show that the proposed structure adheres to the minimum clearance requirements and works are not going to damage existing pipes or severely restrict use of the drain for existing or future Council assets or other drainage purposes.

The following structures are generally supported over or near Council drains, subject to Council assessment and consent prior to works commencing:

- Garage / Carport / Shed less than 9 metres in length consistent with the planning scheme zoning applicable to the property, subject to assessment and consent and may require a section 173 agreement
- Swimming Pool Safety Barriers
- Verandah / Pergola
- Decking
- Fencing
- Eaves (<600mm)

- Steps / Stairs
- Retaining walls (subject to height / depth)

4.3.2 Non-Permissible Structures / Works

Consent to build over or near a drain will not be granted for habitable dwellings and / or Class 1 Buildings and / or where the proposed works are deemed to be a liability and an unacceptable risk to both Council and future owners.

Council **does not** allow the following to be built over or near a drain:

- Habitable dwellings / rooms or Class 1 buildings
- Basements
- Swimming pool / spa and equipment (both inground and above)
- Sheds and garages over 9.0m in length in length consistent with the planning scheme zoning applicable to the subject property
- Underground car stacker
- Underground rainwater tank
- Aboveground rainwater tank greater than 3kL in size
- Private services such as meters, private stormwater pipes, electricity lines, sewerage pipes etc
- Structures to be built over or near a Council stormwater pipe greater than 450mm in diameter

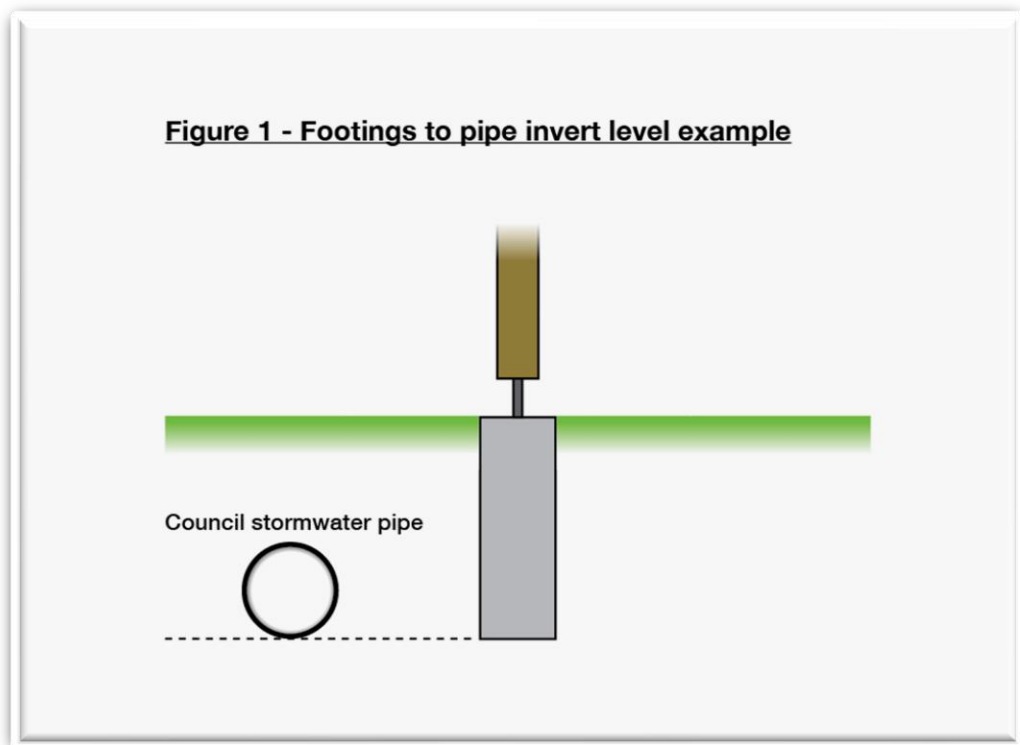
Natural ground levels shall not be changed.

4.4 Minimum clearance requirements to Council drainage assets

The following minimum clearance requirements must be achieved.

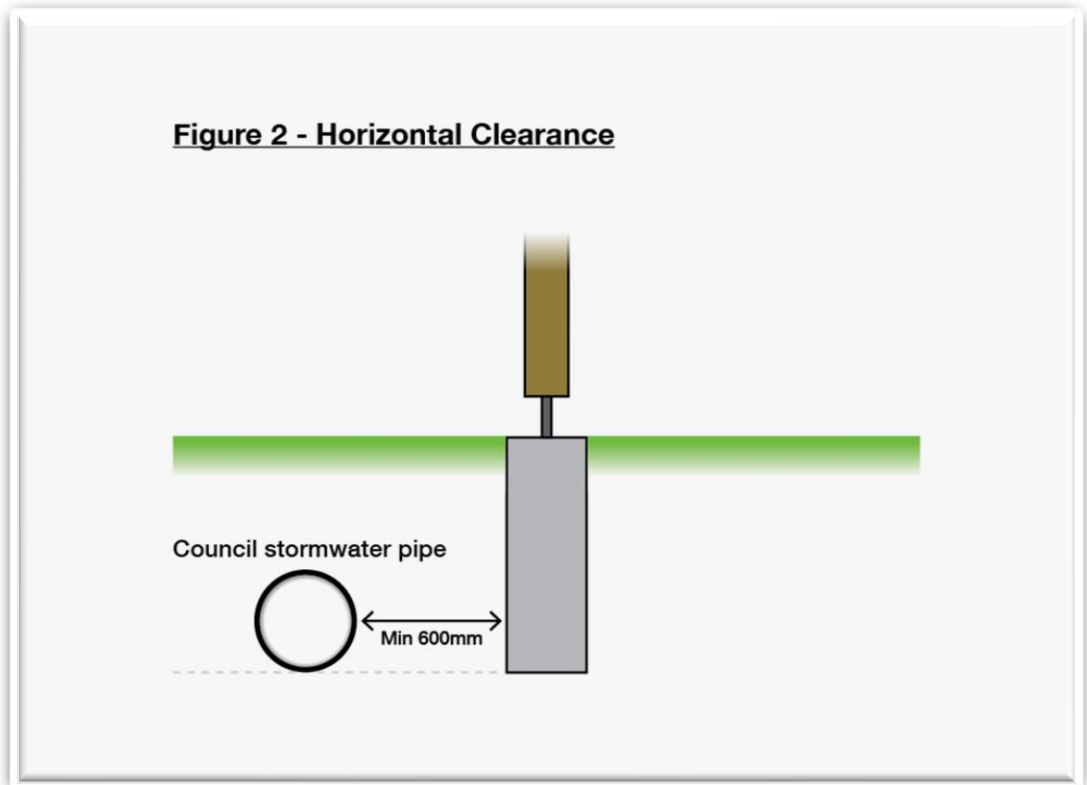
4.4.1 Depth of Footings

The base of any footings is to be in-line with the base of the Council stormwater pipe (invert level).

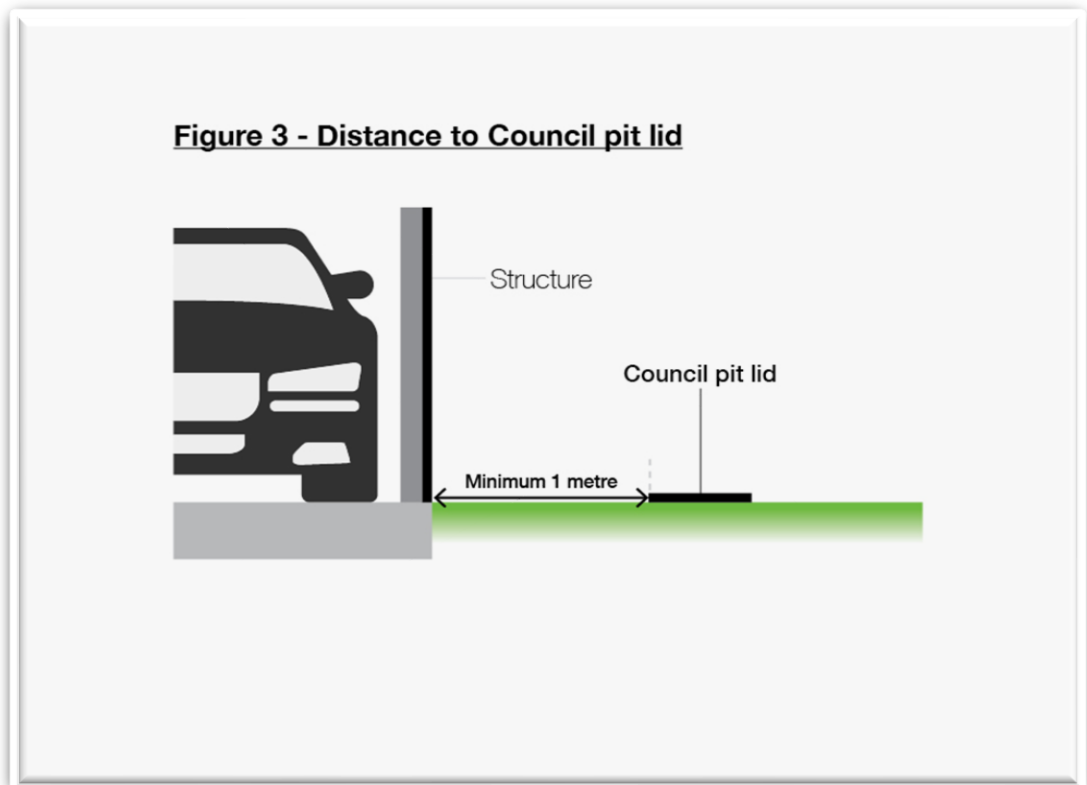


4.4.2 Horizontal Clearance

Any footings in or adjacent to the drain are to have a minimum 600mm horizontal clearance from any Council stormwater pipe.

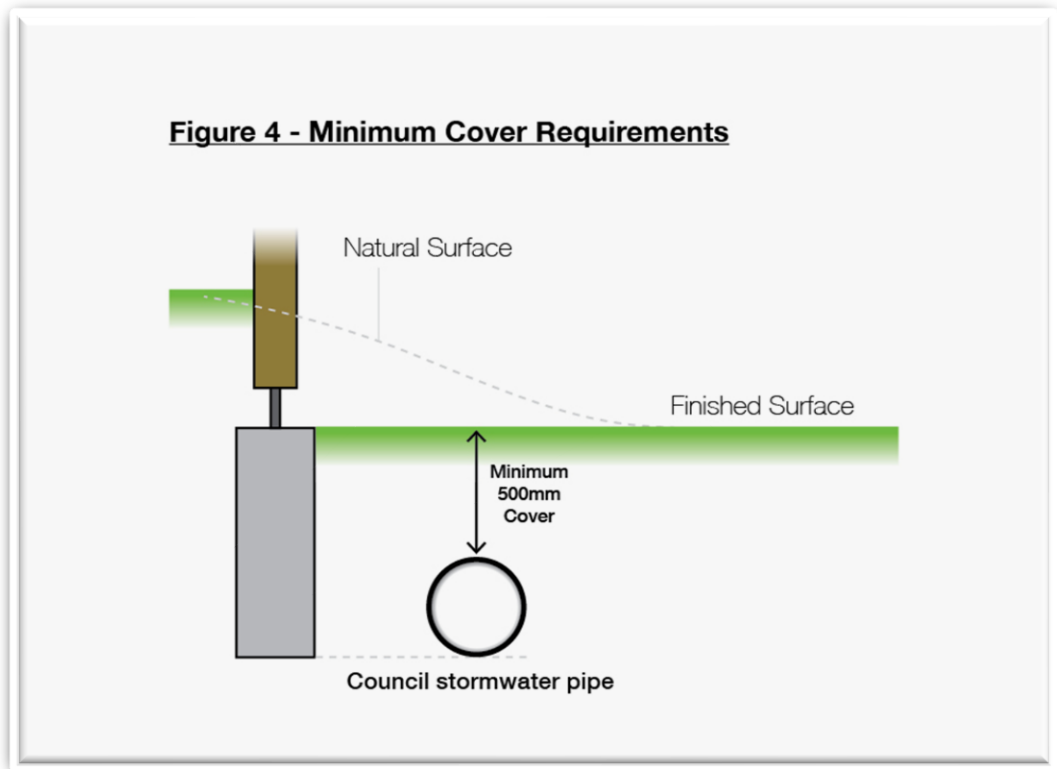


Any structure must have a minimum 1 metre clearance from any Council stormwater pit. Access to any Council stormwater pit must be unobstructed.



4.4.3 Minimum Cover

For any works near a Council stormwater drain, the existing cover over the pipe must be maintained.



4.5 Apply to build over or near a Council drain

4.5.1 Prepare your documentation

- (i) Covering letter with a description of the proposed works over or near the drain.
- (ii) A full set of building plans must include:
 - The Council asset within the subject site, as constructed, a survey or annotated photographic evidence of the pipe's exact location completed by a land surveyor or a service locator.
 - Scaled site plan showing all proposed structures over or near the drain, including pipe size, pipe and pit location with offsets from the edge of the proposed structure.
 - Scaled cross sections showing footings to the depth of the pipe's invert level.
 - Scaled cross sections showing footings offset a minimum 600mm from the edge of the confirmed pipe's location.
 - An elevation plan showing the proposed structure over the drain.
- (iii) Copy of title and plan of subdivision issued within the last 3 months, including:
 - the Registered Search Statement, all listed encumbrances, caveats, and notices detailed, e.g. s173 Agreement.
 - The plan of subdivision (PS).
You can apply for the title and PS through the City of Kingston [website](#), or [LANDATA](#) website.

- (iv) Copy of all other vested authority approvals for works within the subject property. For example: South East Water, Melbourne Water, Ausnet and United Energy (if applicable).
- (v) Copy of Planning Permit and endorsed drawings (if applicable).

4.5.2 Additional information that may be required

Council may require additional information, which can include:

- If the structural condition of the drainage asset needs to be checked prior to and post construction, a CCTV inspection arranged by Council, will need to be conducted at the expense of the developer. Council will provide a price for the CCTV inspection to the developer.
- Depending on the condition of the drainage asset, Council may need to carry out remediation works prior to the commencement of any private works .
- If the existing structural condition of the pipe is considered unsuitable for construction work near the pipe, Council may consent for the developer to upgrade the pipe at the expense of the developer to Council standards and satisfaction.
- If there is a requirement for a s173 Agreement to be lodged on the title, all costs are to be incurred by the developer / property owner.
- If there is any damage to a Council asset as a result of private works, the owner/s of the property / developer is to incur all costs associated with any rectification works, including additional post construction CCTV inspection. All rectification works must be to Council's satisfaction.

4.6 Apply online

Apply online via Council's [website](#) at 'Building over a Council drain'.

- Complete the online form.
- Upload the supporting documentation.
- Agree to Council's indemnity terms and conditions in the online application.
- Pay the fee. The application fee is not refundable if your application is refused.

4.7 What happens next?

The preliminary assessment timeframe for a building over an easement application is up to 14 business days. The actual processing time is subject to the complexity of the application and may take longer depending on the plans, existing site constraints and conditions.

Council may:

- (a) refuse consent; or
- (b) consent to the application.

It's possible that approval to build over or near the drain may be granted but subject to certain conditions that need to be adhered to and all associated costs borne by the developer. Possible conditions include, but are not limited to, the following:

- Pipe upgrade works if the pipe is under capacity and/or final stage of service life
- Installation of additional drainage pits
- Protection works for Council drainage
- Footing depth requirements
- Protection works to neighbouring property assets
- Protection works for vegetation

Consents are valid for 12 months from the issue date. A new application must be lodged when there are any changes to the proposed works / plans.

5. Key Stakeholders

- Infrastructure Department.
- Legal Department.
- City Development Department.

6. Internal and External Assessments

6.1 Risk Assessment

This policy has been assessed by the relevant department and has identified the following risks:

- Damage to Council stormwater drainage assets.
- Localised flooding from damaged Council drainage assets.
- Underpinning required of neighbouring properties to the proposed structure.

6.2 Delegation and Authorisation (Compliance Framework)

There are no delegated positions with responsibilities for this Policy.

6.3 Gender Impact Assessment

A Gender Impact Assessment is not required for this Policy.

6.4 Privacy Impact Assessment

A Privacy Impact Assessment is not required for this Policy.

6.5 Human Rights Charter

This policy has been reviewed against the Charter of Human Rights and Responsibilities Act 2006. The following rights are reasonably limited:

Section 20 Property rights are limited to protect Council assets from damage which can impact surrounding property owners.

7. Roles and Responsibilities

Role	Responsibility
Development Engineer	Assess all build over or near Council drain applications.

8. Related documents

8.1 Legislation

- Local Government Act 1989 (Vic)

8.2 Documents and resources

- Building Over Easement Guideline

9. Definitions

Term	Definition
CCTV	Closed Circuit Television Video involves the use of a motorised camera to record the internal asset condition and serviceability of conduits such as stormwater drains, sewers or pipelines and maintenance structures such as manholes.