




Building Over Easement Guideline

1 Document Control

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RELEVANT POLICY	

2 Purpose

The *Building Regulations 2018* (Vic), Part 8, Division 2, r130 requires that consent must be obtained from Council to an application for a building permit to construct a structure over an easement.

This Guideline is designed to be used for registered or recorded easements and is a general guidance only. Decisions will be made on a case-by-case basis and each proposal assessed on the specific works proposed.

Refer to *Building Over Council Drain Policy* for consent to build over or near a public drain vested in and under the management and control of Council located in a property and is not supported by a registered or recorded easement.

3 Scope

Council restricts and controls what can be built over or near an easement. 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 Guidelines

4.1 Registered or recorded easements

An easement will be recorded or registered on your title or your plan of subdivision (PS). It will be shown as a defined area of land. The title & / or PS will confirm any easements on your property and may list authorities that have an interest in that portion of land. e.g. E-1 drainage 3 metres wide in favour of Kingston Council.

A registered or recorded easement in favour of Council gives Council access rights over your property. Easements can contain existing services such as stormwater pipes/pits, sewer lines, electricity lines and gas mains or they may be empty but reserved for future services.

Council uses its access rights for the maintenance, installation, replacement, or upgrades of essential drainage infrastructure.

The title will not show if any assets or services are located within the easement. You will need to lodge a [Before You Dig Australia](#) (BYDA) online application to find out if any services or assets are present within the property and proposed works. Council may have pre-construction records of the location of stormwater pipes / pits on your property. You should confirm the exact location of any Council stormwater assets on-site.

4.2 Review your proposed structure

4.2.1 Permissible Structures / Works

Consent to build over an easement 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 easement or drain for existing or future Council assets or other drainage purposes.

The following structures are generally supported over Council easements, 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)

4.2.2 Non-Permissible Structures / Works

Consent to build over an easement 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 an easement:

- 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 consistent with the planning scheme zoning applicable to the 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 an easement containing a Council stormwater pipe greater than 450mm in diameter
- Earthworks will not be permitted within the easement

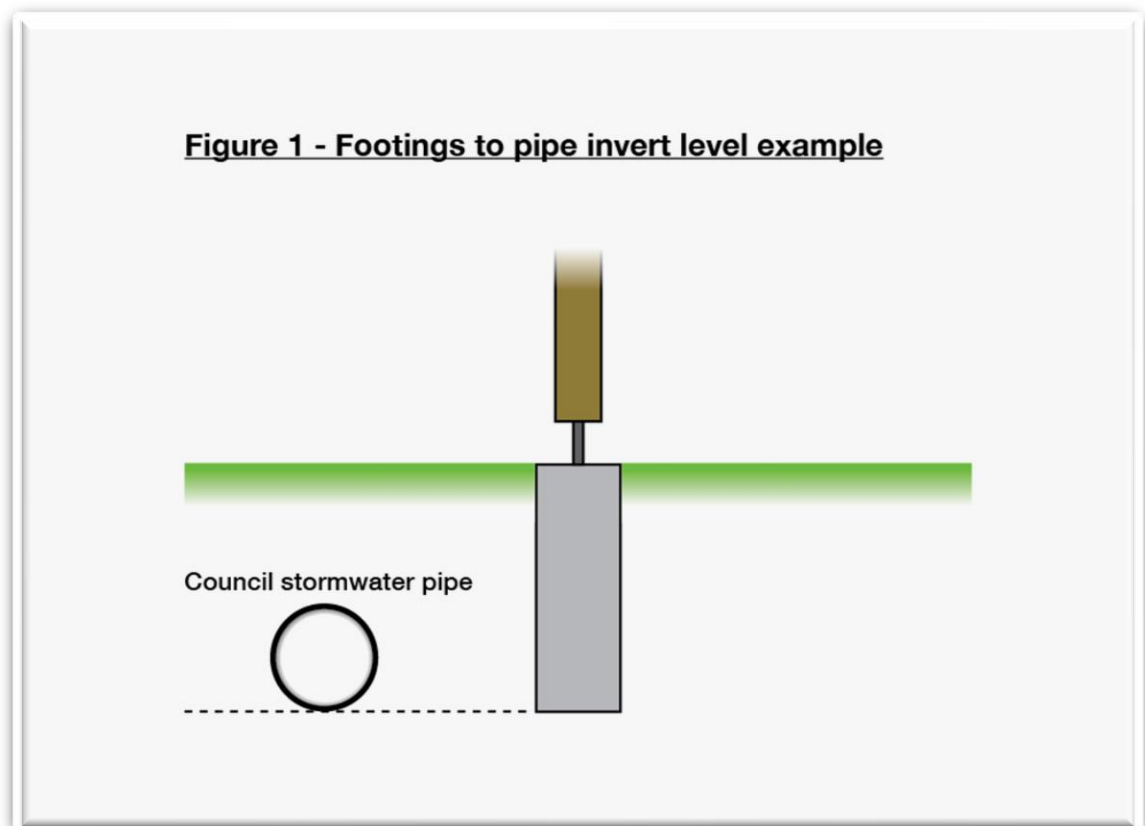
Natural ground levels shall not be changed.

4.3 Minimum clearance requirements to Council assets in an easement

The following minimum clearance requirements must be achieved.

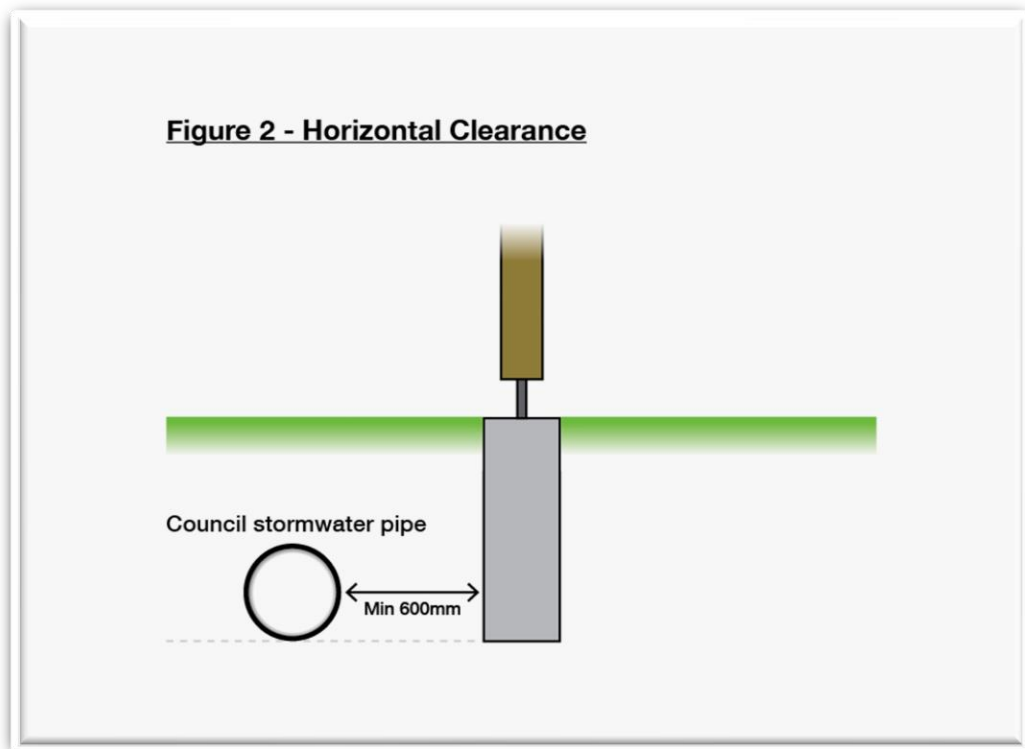
4.3.1 Depth of Footings

The base of any footings within the easement, or along the easement line, are to be in-line with the base of the Council stormwater pipe (invert level).

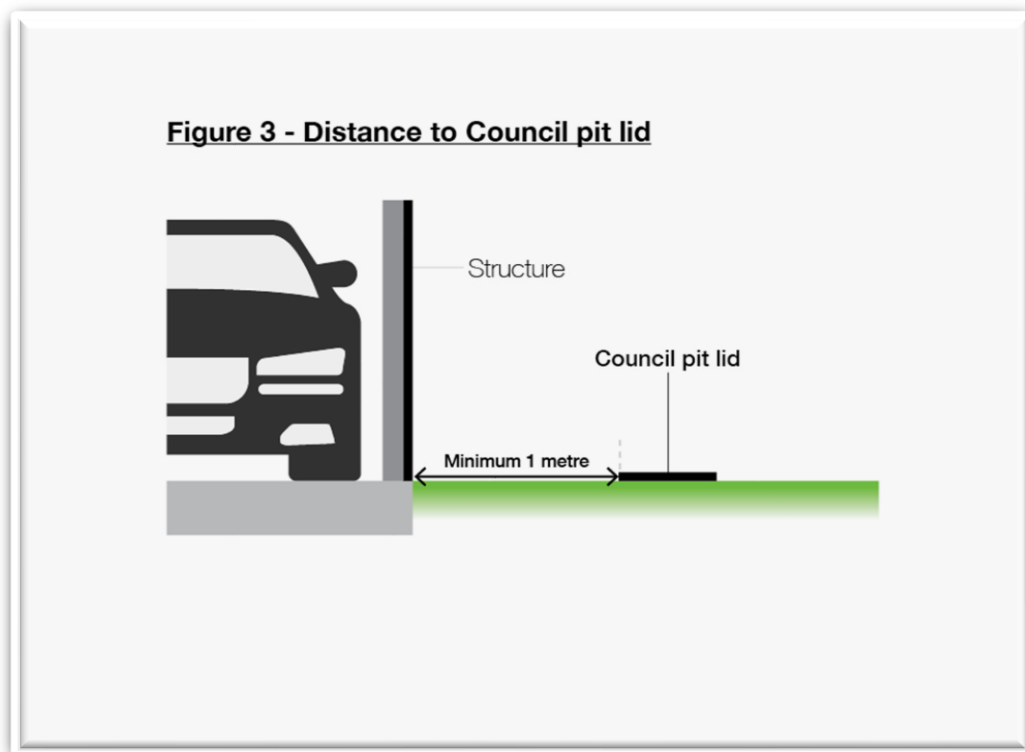


4.3.2 Horizontal Clearance

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

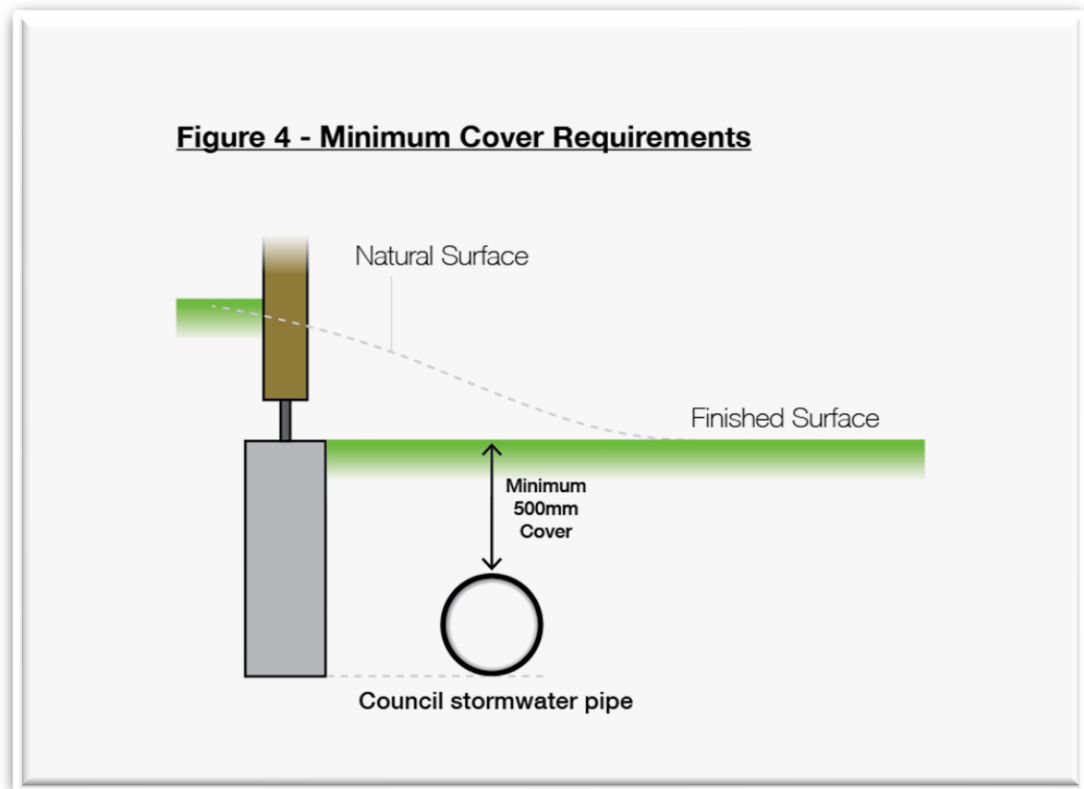


Any structure must have a minimum 1 metre clearance from any Council stormwater pit. Access to any Council stormwater pit must be unobstructed.



4.3.3 Minimum Cover

For any works within an easement, the existing cover over the pipe must be maintained.



4.4 Can I remove or vary an easement?

It is not always possible to remove or vary an easement. If you have ascertained there are no assets contained within your easement, contact Council's Infrastructure department. Easements without any assets / pipes may provide overland flow paths or be required for future use. Council's Engineers need to check and assess if there are any plans to construct a drain in the easement and / or the easement is required to be kept clear to provide an overland flow path.

Council's preferred method to remove and / or vary the easement is by lodging a Planning Application in accordance with *Clause 52.02 Easements, Restrictions & Reserves* of the Kingston City Council Planning Scheme.

- For more information on Clause 52.02 of the Kingston Planning Scheme please refer to the Department of Transport and Planning website [52.02 EASEMENTS, RESTRICTIONS AND RESERVES Kingston Planning Scheme - Ordinance](#).
- For more information on how to apply for a Planning Permit for Subdivision, refer to the Kingston website [Planning permit applications - City of Kingston](#).

You can also contact Council's City Development team to discuss your requirements.

4.5 Apply to build over an easement

4.5.1 Prepare your documentation

- (i) Covering letter explaining why the consent is being requested and a description of the proposed works over the easement.
- (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 exact location of the easement and/or pipe's, completed by a land surveyor or a service locator.
 - Scaled site plan showing all proposed structures over the easement, including easement dimensions, and where applicable, 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 easement.
- (iii) Copy of property 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 easement. For example: South East Water, Melbourne Water, Ausnet and United Energy, other property Lots (if applicable).
- (v) Copy of Planning Permit and endorsed drawings (if applicable).

4.5.2 Additional information that may be required

Applications that have a Council stormwater pipe in the easement 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 within the easement, 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.
- If there is any damage to a Council asset as a result of private works within the easement, 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.

4.5.3 Apply online

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

- 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.

4.6 What happens next?

The preliminary assessment timeframe for a consent to build 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 with or without conditions.

It is possible that approval to build over the easement 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

Building over Easement 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.

4.7 Retrospective build over easement consent

Where consent to build over the easement was not obtained for an existing structure, a building surveyor can make a retrospective application to keep the existing structure as it has been constructed. All retrospective applications will be assessed as a new application and are required to comply with these guidelines. There is no guarantee that, as the structure has been in place for a period, consent will be granted. Consent can be refused and a building notice / building order to remove the structure issued.

5 Responsibility

The areas or positions responsible for defined tasks in implementing, maintaining, and approving these procedures / guidelines.

Position/Team	Responsibility
Roads and Drains	Development Engineer

6 Related Documents and Resources

Legislation / External Document

- Building Act 1993 (Vic)
- Building Regulations 2018 (Vic)
- Kingston Planning Scheme
- Local Government Act 1989 (Vic)
- Planning and Environment Act 1987 (Vic)

Internal Document

- Building Over Council Drain Policy

7 Definitions

Term	Meaning
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.
Easement	An easement is a right held by someone to use land belonging to someone else for a specific purpose. Common examples of easements are drainage, sewerage and carriageway easements which could be either registered or implied easements.