

# **APPLICATION TO BUILD OVER PIPELINES**

## **GUIDELINES/PROCEDURES DOCUMENT**



**Operations Division – Water Services Department  
Adopted - November 2001**

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## 1. PURPOSE

This Policy Document sets out the process for Ashburton District Council staff to follow when assessing applications to build over/near pipelines (and within easements) that are part of asset networks managed by the Water Services Department. Using this process will ensure consistency, and streamline the processing of applications.

All Ashburton District Council staff must abide by the requirements of this policy. Where staff are unable to abide by the requirements, they must report the problem to the Water Services Department.

## 2. SCOPE

This process applies to the enquiries that Council receives regarding building over:

- wastewater pipelines
- stormwater pipelines
- water supply pipelines
- easements

These include pipelines that are currently in use, and redundant pipelines that are still in the ground, although the latter is not the main focus of this policy.

This policy describes:

- the philosophy of the Water Services Department concerning building over pipelines and easements
- the chronological process of enquiry, application, assessment, and possible approval
- the criteria for staff to use in assessing applications
- the terms that apply when approval is given
- the roles and responsibilities of staff
- a statement of Council's legal position and responsibilities.

## 3. PHILOSOPHY

### 3.1. BUILDING OVER PIPELINES AND EASEMENTS IS UNDESIRABLE

Water Services believes that, as a general rule, residents should avoid building over pipelines and easements. Water Services considers that building over a pipeline could:

- potentially compromise the durability of the pipeline
- interfere with the pipeline's ongoing maintenance
- compromise the long-term integrity of the proposed building should the pipeline fail or when work is carried out on the pipeline

Even redundant pipelines have been known to affect the integrity of buildings and the ground on which the building is standing. Council officers are aware that some territorial authorities consider that no buildings should be constructed over pipelines or easements.

### **3.2. COUNCIL HAS THE RIGHT TO PREVENT BUILDING WORK**

Council has the right to prevent building work that compromises its ability to perform its duties under the Local Government Act, the Building Act and the Building Code. See "Council's legal position" on page 6, for detail.

However, the Building Act also requires Council to grant a building consent if Council is satisfied that the work meets the provisions of the Building Code.

### **3.3. ONUS IS ON THE APPLICANT**

Staff will apply specific criteria when considering an application to build over pipelines and easements.

Staff will place the onus on the applicant to satisfy Council that:

- Council's ability to maintain the pipeline and replace it when necessary will not be significantly impeded
- the building will not be compromised by future maintenance or replacement work on the pipelines

### **3.4. COUNCIL ASSUMES NO RISK OR RESPONSIBILITY**

If Council approves an application to build over a pipeline, the owner or builder must then bear all risk associated with the building. The owner must register the work on the title of the property, in the form of a Memorandum of Encumbrance.

Approval of an application to build is on the basis that Council assumes no risk or responsibility concerning:

- the building
- the legal or engineering work associated with the application
- the work itself
- any consequences arising from the work

## **4. APPLICATION PROCESS**

The flowchart in Appendix A sets out the chronological process of:

- enquiry
- application
- assessment
- terms of approval

## **5. ENQUIRY**

When a potential applicant enquires about building over a pipeline or an easement, staff will advise the applicant of various matters he or she must be aware of.

Staff shall advise the potential applicant that as a general rule, buildings should not be constructed over or very close to pipelines, because of the potential damage to property and disruption to maintenance. It should be clearly stated that it is Council's preference that buildings are not constructed over pipelines.

Staff shall advise the potential applicant that, if were to apply for building consent to build over a pipeline, he or she must:

- identify pipelines and easements on or under the land at the time of applying for building consent
- satisfy Council that its right to repair, replace and otherwise maintain existing drains will not be compromised by building work
- satisfy Council that the building location and requirements of code compliance will not be compromised by future pipeline maintenance, repair or replacements
- recognise and acknowledge that if approvals are sought to build over a pipeline, Council must exercise a judgment which may result in an application being declined
- obtain the written approval of the owner of the pipeline if the proposed building is over a pipeline that is in private ownership

Staff will also advise the potential applicant that, if the application is approved, the applicant or owner must:

- acknowledge and bear all risks associated with future maintenance, repair, or replacement work
- register the encroachment as a Memorandum of Encumbrance against the property's title

Finally, staff will advise the applicant that any approval is subject to registration of the Memorandum of Encumbrance, which must be:

- prepared by a solicitor engaged by the applicant
- reviewed and approved by Ashburton District Council's General Legal Counsel to ensure that all of Council's requirements are met
- put into place before construction commences

Note:- All costs to be met by the applicant.

## 6. APPLICATION

If the potential applicant decides to apply to build over a pipeline, he or she must initially provide the following information:

- the reason for the application
- the accurate location of the pipeline relative to the proposed building, obtained through **site investigation and measurement**
- structural plans of the proposed buildings, structures, foundations, or floor slab spanning the pipeline. These must show:
  - how potential loading on the pipeline will be avoided
  - how reasonable access to the pipeline for future renewal and maintenance is provided
  - how potential settlement of the building due to existing backfill conditions and during future excavation of the pipeline will be avoided
  - a plan detailing the secondary flow path that will stop any discharge from the pipeline from entering the proposed building
  - protection of the building against subsidence should the building fail

## 7. ASSESSMENT

### 7.1. ASSESSMENT PROCESS

Staff will assess every application to build over a pipeline, for the potential impact of construction on the pipeline and the building.

The assessment is designed to:

- prevent loading on the pipeline
- provide access for maintenance and renewal of the pipeline
- prevent the proposed building from incurring damages when maintenance or replacement work is carried out on the pipeline
- prevent the proposed building from incurring damages as the pipeline deteriorates, or at worst, fails completely

Appendix B sets out the 15 criteria to use when assessing an application to build over or near a pipeline.

Staff must assess the application against each criterion in turn until an approved or decline decision is reached. Criteria for building over wastewater, stormwater or water pipelines are set out in the relevant columns.

The assessment criteria are also set out in a flow chart. This is illustrated in Appendix C.

## **7.2. EXEMPTIONS**

The criteria detailed in appendices B and C **do not apply** when the proposed building:

- does not exceed either 1 storey or 10 square metres in floor area; and
- does not contain sleeping accommodation or sanitary facilities or facilities for the storage of potable water; and
- does not have a permanent foundation; and
- can be easily relocated by the owner when work is required on the pipeline underneath the building; and
- is not positioned over access chambers or service connections

## **8. TERMS OF APPROVAL**

The applicant must comply with the following terms when Council approves the application to build.

### **8.1. MEMORANDUM OF ENCUMBRANCE**

The approval is subject to the property owner registering the encroachment as a Memorandum of Encumbrance against the applicant's title.

The property owner will be required to engage a solicitor to prepare the necessary encumbrance.

The Encumbrance will be reviewed and approved by Ashburton District Council's General Legal Counsel to ensure all of Council's requirements are met. This will be required before construction commences. The Encumbrancer shall pay the costs of the Council relating to the preparation, registration, enforcement and discharge of this Memorandum.

The Memorandum of Encumbrance must cover the following:

- the background leading up to the application
- any specific engineering requirements imposed by Council
- Council's ability to enter the land to replace or maintain the pipelines in accordance with its statutory rights and obligations

- Council shall not be liable for any damage or loss incurred to the property which is caused by any subsidence associated with the pipeline or by any renewal or maintenance works associated with the pipe, PROVIDED THAT such renewal or maintenance works are carried out by Council to appropriate standards of workmanship
- Council is not prepared to accept or incur any additional costs for future maintenance or renewal works resulting from the development or for the preparation or enforcement of the provisions of the Encumbrance

## 8.2. BUILDING CONSENT

The applicant must obtain a building consent from Council for the work.

## 8.3. BOND

The applicant must pay a refundable bond of NZ\$1,000. This bond will ensure:

- provision of 'As built' plans after work is completed
- provision of plans showing secondary flow paths
- all separately owned properties, including Council's and private properties affected by the work, are reinstated to the satisfaction of the property owners

## 8.4. 'AS BUILT' PLANS

Within six weeks of completion of the work the applicant must provide Council with 'As Built' plans, and plans detailing secondary flow paths for stormwater.

## 9. ROLES AND RESPONSIBILITIES

The following table sets out the specific Water Services / Building Inspectorate roles and responsibilities.

Role	Responsible for
Water Services Manager (WSM)	Guidance and overseeing the implementation of this process.
Water Services Engineer (WSE)	<p>Reviewing at six-monthly intervals the effectiveness of this process. The results of each review shall be documented and circulated to users of the process.</p> <p>Ensuring that all deviations reported by the users are acted upon, and that an acceptable solution is quickly determined and implemented to prevent recurrence.</p> <p>Advising the users of all changes to this document.</p>
Engineering Assistant	<p>Auditing and reporting on the effectiveness of this process.</p> <p>Monitoring and reporting on the outcome of any changes to this process.</p>
Building Inspectorate Staff	<p>Apply the requirements described in this document to applications to build over pipelines and easements</p> <p>Report to Water Services whenever s/he is unable to conform to the requirements described in this document</p>

## 10. DOCUMENTATION

The following documentation must be placed in the file relating to the property concerned:

- information used in assessing the enquiry and the application
- 'As built' plans
- plans for secondary flow paths
- any subsequent approval
- copy of Memorandum of Encumbrance

## 11. COUNCIL'S LEGAL POSITION

The Local Government Act 1974 requires Council to provide and maintain pipelines for the provision of services. The Building Act and the Building Code require Council to ensure that a building is constructed to an appropriate standard, so that its durability is not compromised by work carried out on a pipe during the life of the building.

### 11.1. LOCAL GOVERNMENT ACT 1974

The Local Government Act 1974 details the legal responsibilities of Council and the property owner.

Under Section 442, Council has statutory rights to provide, cleanse, repair and maintain pipelines.

Under Section 451, property owners must notify the Council if building is proposed that will make diversion, alteration, protection or replacement of any pipelines essential.

When a property owner applies to Council to build over pipelines, Council must determine objectively whether the building will physically interfere with the pipelines or prevent the Council from carrying out its statutory powers of cleansing, repairing and maintaining the pipelines.

If it is not practical or reasonable to divert or alter the drain, Council can either prevent the building from being constructed or reach a reasonable compromise with the property owner.

The property owner has to bear any cost of diverting, altering, protecting, replacing the pipelines or any other cost that Council may incur.

### 11.2. BUILDING ACT 1991 AND THE BUILDING CODE

Under the Building Act 1991, Council has to grant building consent if it is satisfied that the proper completion of the work shown on the plans and specifications meets the provisions of the Building Code.

### 11.3. REFERENCES

Local Government Act 1974

Building Act 1991 and Building Code

Resource Management Act

ADC Asset Management Plans

Ashburton District Council Bylaws



## 12. DEFINITIONS

**Applicant** refers to a person or a building firm who is applying to build over Council's pipelines and easement.

**Pipeline** refers primarily those pipe assets managed by the Ashburton District Council.

**Secondary flow path** refers to the path over which surface water will follow if the drainage system becomes overloaded or inoperative.

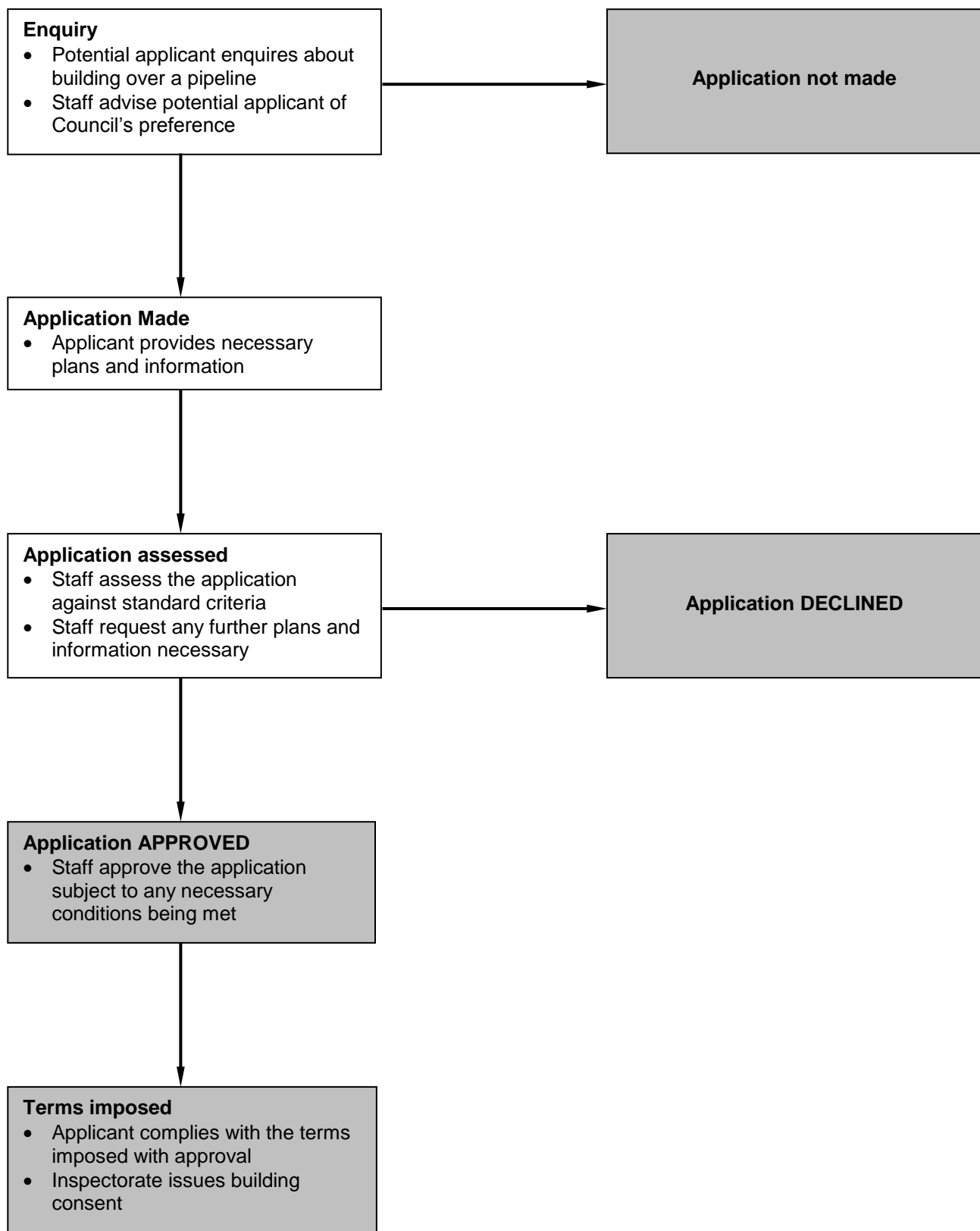
**Surface water** refers to all naturally occurring water, other than sub-surface water, which results from rainfall on the site or water flowing onto the site, including that flowing from a drain, stream, river, lake or sea.

**Secondary flow plan** refers to a plan that describes the secondary flow path.



**APPENDIX A**

Process of enquiry, application, and approval.





## APPENDIX B

Criteria for assessing applications to build over pipelines, table Format.

Criteria	Pipeline	Yes	No
1	<b>Is it possible to realign pipeline and council service connections clear of the building?</b>		
	Wastewater Stormwater Water	Impose conditions to realign the pipeline and service connections according to Council's standards and specifications. This includes registering an easement in favour of the Ashburton District Council over the realigned pipeline and service connections and submitting "As-Built" plans.  Grant approval to build, subject to conditions above	Go to criteria 2
2	<b>Is the pipeline greater than the following diameters?</b>		
	Wastewater: 165mm Stormwater: 235mm	Decline application to build	Go to criteria 3
	Water: All diameters	Decline application to build	Go to criteria 15
3	<b>Is there an easement over the pipeline?</b>		
	Wastewater Stormwater	Decline application to build	Go to criteria 4
4	<b>Is there a change of pipeline direction under the proposed building?</b>		
	Wastewater Stormwater	Decline application to build	Go to criteria 5
5	<b>Are there service connections under the proposed building?</b>		
	Wastewater Stormwater	Go to criteria 6	Go to criteria 8
6	<b>Are the service connections privately owned?</b>		
	Wastewater Stormwater	Go to criteria 7	Decline application to build
7	<b>Will the owner consent to building over the service connection?</b>		
	Wastewater Stormwater	Impose condition requiring written consent from owner  Go to criteria 8	Decline application to build
8	<b>Are there access chambers within 3.0 metres on either side of the proposed building?</b>		
	Wastewater Stormwater	Go to criteria 9	Impose condition requiring access chambers to be installed within three metres on either side of the proposed building  Go to criteria 9

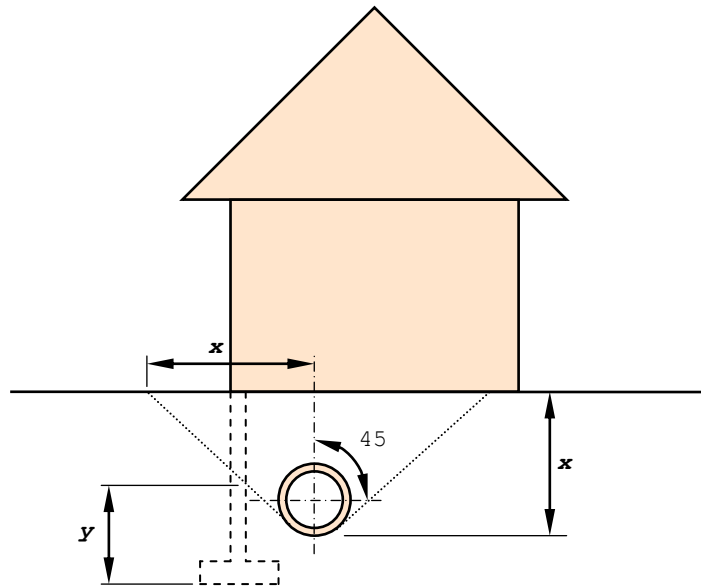
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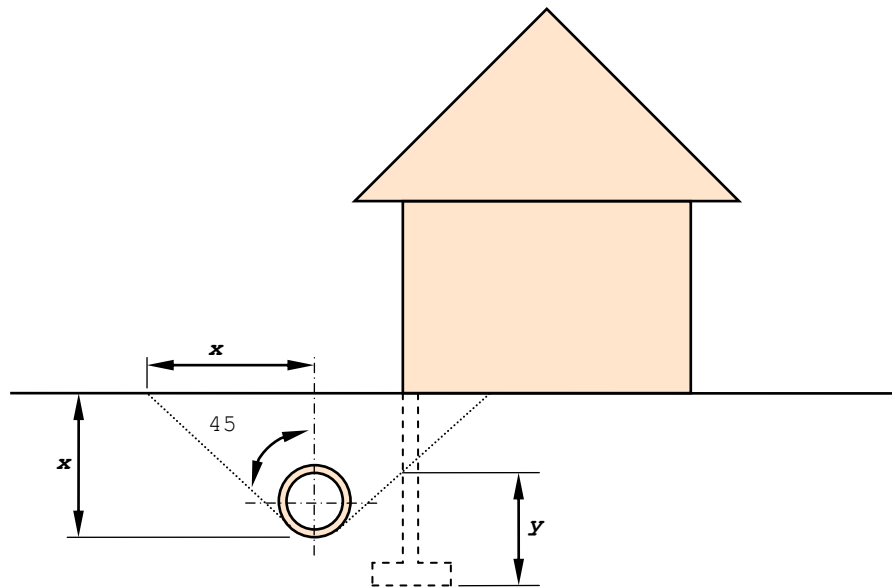
Criteria	Pipeline	Yes	No
9	<b>Will future excavation to the pipeline compromise the integrity of the proposed building?</b>		
	Wastewater Stormwater	Go to criteria 10	Go to criteria 11
10	<b>Can the risk posed by future excavation be overcome by foundation design?</b>		
	Wastewater Stormwater	Impose condition requiring pipe replacement, and/or encasement, and foundation design (see appendix C) Go to criteria 11	Decline application to build
11	<b>Will the proposed building impose additional loading on the pipeline?</b>		
	Wastewater Stormwater	Go to criteria 12	Go to criteria 13
12	<b>Can foundations be designed to prevent additional loading on the pipeline?</b>		
	Wastewater Stormwater	Impose condition requiring pipe replacement, and/or encasement, and foundation design to prevent loading on the pipeline (see Appendix C) Go to criteria 13	Decline application to build
13	<b>Is the proposed building in the secondary flow path?</b>		
	Wastewater Stormwater	Go to criteria 14	Grant approval to build, subject to conditions set out in the criteria above
14	<b>Can surface water enter and damage the proposed building?</b>		
	Wastewater Stormwater	Go to criteria 15	Grant approval to build, subject to conditions set out in the criteria above
15	<b>Can the risk be overcome by a secondary flow plan?</b>		
	Wastewater Stormwater	Impose conditions requiring a secondary flow plan, Memorandum of Encumbrance and "As Built" plans. Grant approval to build, subject to conditions set out in the criteria above	Decline application to build

**APPENDIX C**

## Foundation Design



$y$  = the foundation depth as per The New Zealand Building



$y$  = the foundation depth as per The New Zealand Building