



# Build Over Easement Guidelines

*Urban Drainage Act 2013 - Section 13*

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## Introduction

Public stormwater systems constructed through private property are protected either by the existence of an easement or an implied easement as under s. 13(1) of the *Urban Drainage Act 2013*.

We discourage building over easements (actual or implied) because a service authority has the right to gain access to the easement or the system for inspection, maintenance and/or replacement of the service.

However, there are some cases where you may be permitted to build over an easement as outlined below and subject to strict conditions and a formal Part 5 Agreement with Council, if required.

Council's duty is to ensure the stormwater assets under its care are not adversely impacted by the developments happening within the municipality. A Build Over Easement (BOE) permit is a General Manager Consent from Council to build or place a structure on, near or above an easement or public stormwater system and will, where required, be formalised through a Part 5 Agreement.

A Part 5 Agreement is a legally binding document entered into between Kingborough Council and the property owner that protects Kingborough Council's continuous rights of access to the easement if the General Manager consent is given. The Part 5 Agreement will run as a covenant with the land.

You must obtain consent from Council to build over a drainage easement (actual or implied). However, other service Authorities such as TasNetworks, TasGas and TasWater, may also have an interest in the easement. If so, you must also get consent from each of the interested Authorities individually. All utility consents must be provided to Council with your BOE permit application.

## What Is an Easement?

An easement is a section of land registered on your Property Title that gives Council, or other nominated authorities, access rights onto and through your property. Council will typically use these access rights for the inspection, installation, upgrade, and maintenance of the public stormwater system. Easements should appear on a copy of your properties certificate of title, although in some instances where an asset exists in the ground and no easement exists on title, an implied easement will exist.

Easements vary in width depending on their intended function and the type of assets that are contained within them. Width will depend on the size of the infrastructure, the depth of the infrastructure, whether more than one service exists within the easement, and the height of the adjacent structure. A typical width for a drainage easement is between 1.8m - 3.0m. However wider and narrower widths are not uncommon.

Kingborough Council requires continual access to easements (actual or implied) to ensure that its existing stormwater network continues to provide reliable service and to connect new and existing developments to the public stormwater network.

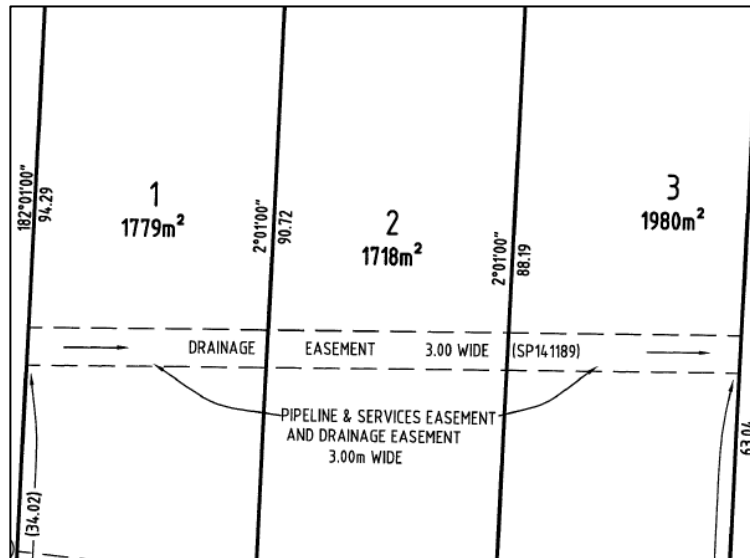


Figure 1- example of an easement on a Folio Plan

## Protection of Stormwater Assets (implied easements)

If a public stormwater network has been constructed within your property but there is no easement on your title at the same location, Council still has rights under *the Urban Drainage Act 2013* (the Act) to protect its assets. S. 13(1) of the Act describes this:

*“(1) Unless [subsection \(11\)](#) applies, a person must not, without a general manager's consent, cause or permit –*

- (a) any prescribed structure to be built on, or any filling to be placed on or removed from, land over which –*
  - (i) an easement exists in favour of the relevant council; or*
  - (ii) an easement exists for public stormwater systems; or*
- (b) any prescribed structure to be built on, or any filling to be placed or removed from, within one metre laterally from the outer edge of any public stormwater systems of the council or such other distance as determined by the general manager; or*
- (c) any prescribed structure to be built above or below any area prohibited by paragraph (b); or*
- (d) the removal of any soil, rock or other matter that supports, protects or covers any stormwater-related works of the council.”*

Thus, regardless of whether the public stormwater system has been constructed within an easement, Council has the same rights of access to its assets for maintenance and operations, and Council must approve of any proposed works near or over any public stormwater system.

For more information regarding the Act, visit:

<https://www.legislation.tas.gov.au/view/html/inforce/current/act-2013-071>

## Criteria for Assessment

We will only consider approving an application to build over an easement or public stormwater system if it meets the following criteria:

1. A viable alternative for the proposed building or work is not possible on the site.

- Can building over the easement or public stormwater system be avoided?
  - Is there a viable alternative location for the proposed works, which is clear of the easement and public stormwater system?
2. The proposed structure or work (including earthworks) will not obstruct or limit the ongoing maintenance of any public stormwater system, asset or other inspection opening located within the easement or public stormwater system.
  3. Building works (including earthworks) near or over a stormwater asset will not:
    - a. Interfere with or adversely affect the function of the stormwater asset; or
    - b. Place any additional load to the stormwater asset.

*See Appendix A for footing clearance envelope and angle of repose.*
  4. Adequate access is provided along the alignment of the stormwater asset for future maintenance.
 

*See Appendix A for overhead clearance access envelope and angle of repose.*
  5. Access to stormwater connection points are maintained.
  6. Adequate access is provided around manholes and pits associated with any stormwater asset.
  7. Building works (including earthworks) will not obstruct or redirect overland flow or adversely impact on flood levels.
  8. The proposed structure or work (including earthworks) will not impact the drainage of an adjoining allotment or future public stormwater system.
  9. All statutory authorities and organisations that have rights over the easement have granted written approval to build over the easement.

These assessment criteria ensure that Council can maintain, and construct drains without incurring the additional expense associated with the use of specialized equipment or construction techniques.

## What Can Be Placed Over an Easement or Council Asset?

The type of structure or works that can be placed on an easement often depends on the requirements of the easement itself. Generally, all permanent and/or habitable structures are not allowed to be placed within the easement. In the Act, these structures are labelled **Prescribed Structures**. What constitutes a prescribed structure is set out in *the Urban Drainage (General) Regulations 2016*.

<https://www.legislation.tas.gov.au/view/whole/html/inforce/current/sr-2016-015>

Other factors such as overland flow paths or future stormwater upgrade works might result in a different outcome. All applications will be assessed on a case-by-case basis.

Applications involving proposed works of a temporary nature will be considered on their individual merits. Temporary works are works that can be easily removed from the easement should access be required.

Where the prescribed structure, or a structure excluded in the *Urban Drainage (General) Regulations 2016*, is required to be moved for the authority to access or carry out any improvements works, the removal and replacement of the structure is at the owner's cost.

## **Interference with Public Stormwater Systems**

Vegetation with intrusive root systems shall not be placed over or near easements and Council assets.

Some tree species have very intrusive root systems that penetrate underground stormwater pipes in search of water. These root masses cause damage to drains and cause blockages of the drainage system and may cause flooding of downstream properties. It is recommended to obtain some advice from an arborist prior to planting any tree in the vicinity of a public stormwater asset.

Under s. 14 of the Act, where vegetation is found to be interfering with a public stormwater asset, Council can enforce its mandatory removal. This shall be at the property owner's cost.

## Application Process

### Pre-Application

1. Prior to designing any structure or carrying out works, establish whether the proposed structure or works will be located over an easement or within 1.0 metre laterally from the outer edge of any public stormwater system.
2. Read these guidelines to confirm if the proposed works would comply with Council requirements.
3. Lodge an online application to Kingborough Council along with:
  - a. The applicable application fee (no fee FY20/21);
  - b. The current certificate of title including the plan of subdivision; and
  - c. A set of preliminary building plans indicating:
    - i. The location of the proposed works on the site;
    - ii. Details of the structure or works to be built;
    - iii. Footing details (if applicable);
    - iv. Cross sections through and along the easement or asset being built over. If there are assets within the easement show the angle over repose; and
  - d. Confirmation that you have read and approved of Council's standard Part 5 Agreement for Build Over Easement (You are advised to read this agreement carefully and seek legal advice if further clarification of the terms of this agreement are necessary).

### Council Assessment

*Submission of an application does not constitute approval. Each application is assessed on its own merits.*

4. Council will assess the documents provided. If these are not sufficient to make an assessment you may be asked to provide additional information.
5. If the proposal is found satisfactory, Council will issue final approval (General Manager Consent) for your proposed works over the easement. Otherwise, the application will be refused. (Please note, refusal shall not result in the refund of the application fee).
6. If General Manager Consent is given, a Part 5 Agreement may be raised between the parties (subject to a separate fee). The agreement will be registered and take effect as covenants to run with the land.

A standard fee applies for the processing of applications (NOTE: no fee in FY20/21). However, in the event that additional information is required to assess the condition or location of existing assets, the cost of obtaining this information is to be borne by the applicant. Such costs may include a survey and/or Closed Circuit Television (CCTV) investigations to demonstrate that the construction has not impacted on the integrity of the stormwater asset.

# Appendix A

