

A decorative graphic at the top of the page features stylized green grass on the left, a green fern-like plant in the center, and a blue map of Queensland with yellow lines representing roads or rivers on the right.

Conditions for Approval - Building Over or Adjacent to Constructed Council Drainage Systems and Easements

Version 3 | July 2011

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1. INTRODUCTION

1.1 Citation

This document shall be known as the Technical Services “*Conditions for Approval - Building Over or Adjacent to Constructed Council Drainage Systems and Easements*”.

1.2 Objectives and Scope

Scope of Policy

This policy and associated technical guidelines applies to all buildings and structures on private property that contain Council's drainage infrastructure. For the purpose of this policy, Council's drainage infrastructure includes all stormwater mains and associated infrastructure, such as access holes, connections points between household and Council services.

Objectives

Property owners and developers occasionally want to build new buildings or structures near to, or over, existing under or in-ground infrastructure associated with Council's stormwater services. Council wishes to ensure such developments can proceed without impeding Council's current and future ability to offer services and without causing unnecessary risk of damage to both Council's and privately-owned infrastructure.

This policy aims to:

- (a) Ensure protection is provided against structural damage to existing underground infrastructure services from construction works or imposed loads;
- (b) Ensure access is available for future maintenance of the services;
- (c) Prevent consequential damage to the owner's structures;
- (d) Maintain the amenity (functional use) of the property and allow the occupant use of the property without unnecessary constraints.
- (e) Ensure that Council's costs and liabilities are minimized when constructing, replacing, maintaining or obtaining emergency access to constructed public drainage systems located within private property.

1.3 Head of Power

The head of power for the implementation of this policy is given under Chapter 3 Part 3 Division 2 Sections 77 and 80 of *the Local Government Act*. Associated requirements are referred to under the *Building Regulations 2006 (S56)*, *the Workplace Health and Safety Act 1995* and the *Queensland Development Code 2008 (Non mandatory Part 1.4: Excavation and Piling near Sewers, Stormwater Drains and Water Mains)*.

1.4 Definition

For a stormwater drain the building, structure or material is defined as being located over or adjacent to the stormwater drainage system if the building, structure or material is located that the offset of the nearest point from the centreline of the stormwater drain is a distance less than the depth to the invert of the stormwater drain plus the addition of the pipe diameter plus one (1) metre divided by two.

CCTV shall mean closed-circuit television inspection conducted to inspect the condition of existing underground assets.

Demountable shall mean any structure or roof that can be manually dismantled and removed from its current position by two people within a four hour period.

Easement shall mean an area of land, or part of a lot reserved by law for a specified purpose, such as for access.

Horizontal Distance shall mean the minimum distance between the outermost edge of the walls, slab, footing, driven pile, bored pile and any integral parts of the building and the outside of the service or associated structure.

Qualified Engineer shall mean suitably qualified engineer (civil, structural or geotechnical) having RPEQ accreditation or listed on the national professional Engineer Register (NPER).

Invert Level shall mean the bottom, inside of the pipe, drain etc.

Maintenance Hole shall mean a chamber with a removable cover that allows human and machine access to an underground pipeline.

Inspection Opening shall mean a structure in the line of the sewer between maintenance holes, which provides equipment access, but not personal access to the sewer.

Structure shall mean Includes all non demountable buildings such as a masonry fence, house, deck, pergola, swimming pool, retaining wall and water storage tank.

Interference shall mean dig up, expose of damage.

Zone of Influence shall mean the area under the ground, which is deemed to be loaded by the footings of the building or structure.

2. PRINCIPLES

The guideline is to be implemented according to the following requirements:

2.1 Performance Criteria

The following four performance criteria identify the specific objectives Council aims to achieve for the purpose of this policy.

- (1) The carrying out of building work near or over a stormwater drain or associated structure must not:
 - (a) interfere with or adversely affect the function of the service; or
 - (b) place any additional load on the service.
- (2) Adequate access must be provided to the stormwater drain for future maintenance.
- (3) Adequate access must be provided to any access covers associated with a stormwater drain.
- (4) Access must be maintained to a stormwater connection point at all times.

2.2 Guiding Principles

Council's policy to managing the issue of building over or near Council infrastructure is guided by the following principles:

- (i) Where possible, locate Council infrastructure on public land.
- (ii) Where not possible, acquire easements over Council's infrastructure on private land.
- (iii) Where (i) - (ii) are not possible, require / request building / structure be located elsewhere on the property.
- (iv) Where (i) - (iii) are not possible, relocate service to road reserve (or other agency property).
- (v) Where (i) – (iv) are not possible, and if the hydraulic integrity of agency services may be degraded by relocating the service, and an inspection shows the structural condition of the infrastructure suitable to building over, or it can be improved (eg. by relining), then permit building over infrastructure with conditions, using a Council policy to guide decisions.
- (vi) Where (i) – (iv) are not possible, and if the hydraulic integrity of agency services (as a whole) will not be degraded by relocating the service around the building / structure, relocate infrastructure around new building / structure.

2.3 Environmental Considerations

In addition to a technical assessment under this policy, any proposal for building over or adjacent to a constructed drainage system will be subject to an assessment in accordance with Council's Local Planning Scheme of the merits or impacts of the proposal. Compliance with the technical requirements of this policy is not to be taken as implying that Council approval will be issued.

The purpose of the Policy is to set out guidelines to assess this impact and determine any developer contribution / development condition required to offset or mitigate this impact.

2.4 Easement Requirements for Council Drainage Systems

Council will acquire drainage easements over all constructed public drainage systems within private property.

When a development application is submitted and the property contains a Council drainage system not burdened by a drainage easement, development consent shall be conditional upon the property owner agreeing to grant Council a drainage easement. All costs including legal and surveying associated with the creation of the easement are to be borne by the applicant.

Easement documentation shall include items such as:

- Indemnities in Council's favour for any future damages due to failures in the drainage system.
- Provide enforceable requirements where Council can at some future date require removal of the structure to enable repair of the drainage system with all costs for both removal and reinstatement being borne by the property owner.
- Ensure that the easement requirements be lodged against title deeds so that the current and prospective future owners are aware of the ongoing requirements.

Where a developer / property owner obtains Council approval to reconstruct and / or relocate any existing constructed public drainage system within the subject site, the developer / property owner shall create drainage easements in favour of Council, to suit the relocated / reconstructed drainage system;

All costs associated with the reconstruction and / or relocation of Council's drainage system are to be borne by the applicant. This also includes hydrological and hydraulic studies and design plans prepared by a Civil Engineer registered on the National Professional Engineers Register (NPER).

2.5 Hydraulic Design Requirements

The design Average Recurrence Interval (ARI) for major events shall be 100 years.

For in-fill development and reconstruction works within existing developed areas, Council may vary the design ARI to be compatible with existing conditions. Where Council approves a lower ARI for in-fill development, it will not be less than 50 years.

For minor events, the ARI depends on the zoning of the land being serviced by the drainage system. The minor system design ARIs shall be:

- Open space 1 year
- Residential 5 years
- Commercial 5 years
- Industrial 5 years
- Rural Residential 5 years
- Central Business 15 years

For cross-drainage requirements, refer to Table 5.06.01 in QUDM. Note that a 'Major' road, as defined in QUDM, is considered as a "Major Collector" road, and higher classifications, in Council's Road Hierarchy Plan.

Where a development is designed in such a way that the major system flows involves surcharge across private property, then the underground system (both pipe and inlets) shall be designed to allow the collection and containment of flows having an ARI of 100 years from the upstream catchment within an easement in the private property.

A surcharge path shall be defined for systems even where 100 year ARI flows can be maintained within the underground system. Easements shall be provided in private property over pipe systems and surcharge paths.

2.6 Reserves

Urban Developments

All overland flow paths and open channels not located within a road reserve or park reserve shall be located within an easement or drainage reserve.

All detention basins shall be located within a drainage reserve.

Easements shall be provided through private property over underground drains or overland paths to the lawful point of discharge. All easements shall be in Council's favour and provided free of cost to Council.

Overland flow paths between allotments may be provided within local linkage or linear parks which shall have a minimum width of 15 m. Narrow reserves between allotments

to cater for overland flow paths only will require specific approval and are generally not acceptable.

Any linkage of reserves is to be designed as an integral part of a development by providing access to parks, schools, shops and other community facilities.

The location and layout of any linkage of reserves shall confirm to the principles of Crime Prevention through Environmental Design (CPTED).

The minimum width of the easement or reserve shall be the greater of:

- (a) the outer width of the largest underground culvert plus 2.5 m.
- (b) The width of the open channel (including batters up to 1:4 slope) plus 1.0 m from each batter point.
- (c) Where Council has approved open channel batters steeper than 1:4, the required width shall be 1.0 m from one batter point and 4.0 m from the other batter point. This is required to provide for adequate and safe access for Council plant to maintain the channel.

Evidence of any Deed of Agreement necessary to be entered into to construct any part of the drainage system shall be submitted prior to the issuing of a Decision Notice for Operational Works. Easements will need to be created prior to the endorsement of the plan of survey for the subdivision.

Evidence of any Agreement reached with adjacent landowners to allow an increased flood level on their property, or otherwise adversely affect their property and witnessed by an independent person shall be submitted prior to the issuing of a Decision Notice for Operational Works.

Rural Residential Development

Council will assess the length of any downstream easement, to its lawful point of discharge, on an individual basis. In general, an easement, capable of containing the flow from a storm event having an ARI of 100 years, will be required immediately downstream of the development except in the following circumstances:

- (a) Where a well defined natural watercourse exists; and
- (b) Where the watercourse can contain the Q_{100} flow.

Council will assess the length of any downstream easement, to its lawful point of discharge on an individual basis.

An easement is to be provided upstream of any culvert inlet where the calculated Q_{100} headwater extends beyond the road reserve and into private property.

Evidence of any Deed of Agreement necessary to be entered into to allow an increased flow level on their property, or otherwise adversely affect their property and witnessed by an independent person shall be submitted prior to the Issuing of a Decision Notice for Operational Works.

Easement Conditions

In general, Easement Conditions to be applied to the area in question shall follow the general format of that contained in Appendix B.

2.7 Permanent Structures over Council's Drainage System

The construction of buildings or other permanent structures over constructed public drainage systems is not favoured and will generally not be approved by Council. However, in certain cases, consideration may be given to a development proposal which can satisfy the minimum requirements for construction and maintenance access and also comprehensively demonstrate that objectives of this policy will be met. In these cases it will also be necessary to demonstrate that the site cannot be reasonably developed without building over, or by relocating Council's drainage system.

Filling over Council's drainage systems may be permitted, subject to the approval of Council's technical staff with supporting hydraulic studies prepared by a Civil Engineer registered on the NPER.

The hydraulic study is to demonstrate that there are no adverse effects including diversion of overland flow paths and flooding of upstream and downstream properties.

Note: Construction of buildings or other permanent structures under constructed public drainage systems is not permitted.

Council may permit structures over constructed public drainage systems which are lightweight and easily demountable or removable such as carports and car stand areas. Easement Conditions in favour of Council will need to be created on the title, requiring any costs related to dismantling, removal and subsequent reassembling, re-installation, re-instatement of the above structures to be borne by the property owner.

Fences are not to be built over Council's drainage system as they impede the overland flow path, unless it can be demonstrated that there are sufficient openings to cater for the overland flow and also prevent the potential for debris blockages. Fences must be designed to be able to be readily dismantled. All costs associated with the removal and reinstatement of the fences is to be borne by the applicant.

2.8 Minimum Requirements for Construction and Maintenance Access

Council may give a property owner approval to build a permanent structure over an existing Council drainage system where the structure provides adequate access for Council to reconstruct and maintain the drainage system. Council will not approve a structure over a public drainage system which will result in Council incurring additional costs by having to use specialized equipment or construction techniques.

(a) Dimensional Requirements

Council's dimensional requirements for access are governed by the minimum horizontal and vertical clearances necessary for standard machinery to gain access to and undertake construction and maintenance of public drainage systems. These clearances include:

- (i) The vertical height from the surface level over the public drainage system to the underside of the overlying structure. This is generally governed by the vertical swept path of backhoes, excavators and cranes and must take into account clearances necessary to load and unload standard trucks. The minimal vertical height shall be 5.0 metres.
- (ii) The horizontal distance between permanent obstructions along the line of the public drainage system. This is generally governed by turning circles and horizontal swept paths of backhoes, excavators and cranes and must take into account the limited manoeuvrability capabilities of these standard

machines. The horizontal clearance shall be the minimum of 3.0 metres or the pipe / channel diameter plus 2 metres.

The vertical and horizontal clearances through the structure for access to the Council drainage system is governed by the travelling heights, width and turning radius of standard construction machinery, and must take into account the size of loaded vehicles required to deliver construction materials or equipment. The minimum vertical clearance shall be 3.5 metres and the horizontal clearance shall be 3.5 metres on straight sections with increases provided as necessary on vertical and horizontal curves. A right of carriageway in favour of Council will need to be created over the access way prior to occupation of the building.

Note: The above dimensional values are minimums only. The required clearances will vary according to the size of the Council drainage system and are subject to the discretion of Council's technical staff.

b) Structural Provisions

Design Standards – Minor Structures

Figures 1 and 2 showing the exclusion zone and design of footings required under this Policy, are given in the Appendix of this document. Prior to commencing works on the structure, a plan of the footing design shall be assessed and approved by a Qualified Engineer. A copy of the approved plan must be submitted as part of the Building Over Stormwater Application.

• Minor Structures

These shall include but not be limited to the following:

- Garages under 63 m² that do not require any cut / fill in excess of 0.5 m.
- Carports under 63 m² that do not require any cut / fill in excess of 0.5 m.
- Patios, decks, verandas, stairways and similar structures.
- Retaining walls (including ones requiring fill over the stormwater line) up to 2 m in height.

(a) *For Footings in Zone B*

- (i) All footings shall be extended so that the base of the footing is founded a minimum of 300 mm below Zone B;
- (ii) A Qualified Engineer shall certify that the footing will not impose any additional loading on the stormwater. The Engineer is required to submit a Compliance Certificate for Building Design (Form 15).

(b) *For Footings in Zone A*

- (i) All loads shall be transferred by beams across Zone A onto either supporting piers or a continuous footing which shall be founded a minimum of 300 mm below Zone B;
- (ii) A minimum clearance of 600 mm shall be provided between the base of the transfer beam and top of the stormwater;
- (iii) A Qualified Structural Engineer shall certify that the footing will not impose any additional loading on the stormwater and that

the footing is structurally adequate to span Zone Q. The Engineer is required to submit a Compliance Certificate for Building Design (form 15);

- (iv) Where the age of stormwater to build over is greater than 2 years of age the stormwater is to be Closed Circuit Television inspected. If the condition of the stormwater is deemed to be unsuitable by Council, the section of stormwater shall be either:
1. Relocated clear of the proposed building or structure at the applicant's expense. The design is to be submitted and approved by Council prior to the construction of the stormwater.
 2. Replace with a pipe material nominated by Council from property boundary to property boundary at the applicant's expense.
 3. Relined by a contractor nominated by Council for the full length of pipe between manholes. Costs to the applicant will be determined by Council based on the condition of the existing stormwater.

Design Standards – Major Structures

Figures 1 and 2 showing the exclusion zone and design of footings required under this Policy, are given in the Appendix of this document. Prior to commencing works on the structure, a plan of the footing design shall be assessed and approved by a Qualified Engineer. A copy of the approved plan must be submitted as part of the Building Over Stormwater Application.

- Major Structures

These shall include but not be limited to the following:

- Dwellings of all kinds
- In-ground swimming pools
- Commercial and industrial buildings
- Garages over 63 m²
- Carports over 63 m²
- Retaining walls greater than 2 m in height

In General, establishment of major structures over the stormwater system is not favoured. Alternative designs need to be provided by a Qualified Engineer to verify that a viable alternate route for stormwater of similar capacity exists through the site or other locations should the built over section of the system fail.

(a) *For Footings in Zone B*

- (i) All footings shall be extended so that the base of the footing is founded a minimum of 300 mm below Zone B;
- (ii) A Qualified Engineer shall certify that the footing will not impose any additional loading on the stormwater. The Engineer is required to submit a Compliance Certificate for Building Design (Form 15).

- (b) *For Footings in Zone A*
- (i) All loads shall be transferred by beams across Zone A onto either supporting piers or a continuous footing which shall be founded a minimum of 300 mm below Zone B;
 - (ii) A minimum clearance of 600 mm shall be provided between the base of the transfer beam and top of the stormwater;
 - (iii) A Qualified Engineer shall certify that the footing will not impose any additional loading on the stormwater and that the footing is structurally adequate to span Zone A. The Engineer is required to submit a Compliance Certificate for Building Design (Form 15).

Where the age of stormwater to be built over or adjacent to is greater than 2 years the stormwater is to be Closed Circuit Television (CCTV) inspected. If the condition of the stormwater is deemed to be unsuitable by Council, the section of stormwater shall either be:

1. Relocated clear of the proposed building or structure at the applicant's expense. The design is to be submitted and approved by Council prior to the construction of stormwater.
2. Replace with a pipe material nominated by Council from property boundary to property boundary at the applicant's expense.
3. Relined by a Contractor nominated by Council for the full length of pipe between manholes. Costs to applicant will be determined by Council based on the condition of the existing stormwater.

(c) *Right of Access by Council*

Provision is to be made to ensure that Council has uninhibited legal right of access through the overlying structure to the Council drainage system.

To ensure that Council has uninhibited access through the overlying structure, for emergency purposes, gates or doors cannot be installed along the path of access, between the public road and the Council drainage system.

To ensure that Council has legal right of access through the overlying structure, a Right of Carriageway is required to be granted to Council over the full length and width of the access, between the public road and the public drainage system. The Right of Carriageway shall be created to facilitate the minimum dimensions required by Paragraph 2.7.

2.9 Minimum Easement Width Requirements

The width of any drainage easement is controlled by the minimum practical width necessary for standard machinery to carry out reconstruction of the public drainage system to current standards and Occupational Health & Safety requirements. For this reason, the minimum width of any drainage easement shall be 3.0 metres.

For pipes / channels having a width greater than 1.0 metre, the drainage easement shall have a minimum width equal to the external width of the pipe / channel plus 2 metres, rounded to the next 0.1 metre (See Figure 1 below).

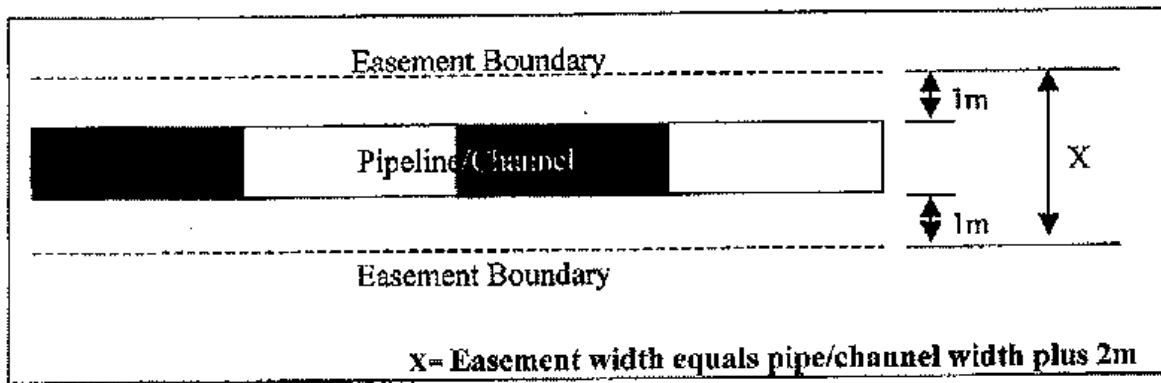


Figure 1 – Drainage Easement Width (Straight)

If bends occur in the Council drainage system then the minimum easement width shall be increased as detailed in figure 2 below.

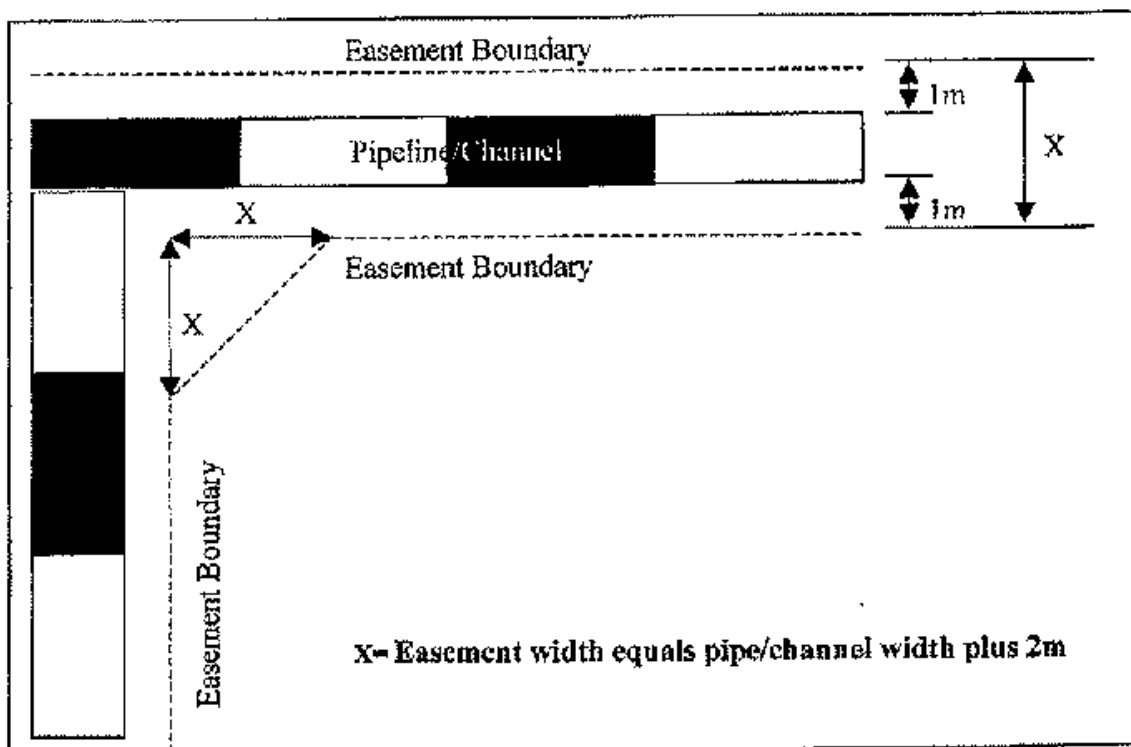


Figure 2 -- Drainage Easement Width (Bend)

3. SITE WORKS

- 3.1 Prior to commencing works, the exact location and depth of the stormwater drainage system shall be ascertained on-site. Any discrepancies between the actual and recorded location and depth shall be reported to Council for investigation before proceeding. All costs for such investigation shall be borne by the applicant.
- 3.2 Adequate measures shall be taken to ensure the stormwater drainage system is protected from damage at all times. In particular, heavy earthmoving equipment and driven piles shall not be used near the stormwater drainage system. In the event that the system is damaged Council must be notified immediately. All costs associated with rectification of damage to Council assets will be recovered from the owner / builder / applicant.

4. INSPECTION REQUIREMENTS

4.1 The following stages of work shall be presented for inspection as applicable:

- (a) **All footing systems located within the zone of influence** prior to construction shall be inspected and certified by the building certifier or a professional engineer.
- (b) **All exposed stormwater drains** prior to backfilling a Council Inspector shall first be given the option of inspecting the sewer. A minimum 24 hours notification of inspection is required.
- (c) **All stormwater drains** to be CCTV inspected before and after building works. Ten (10) days notice is required. Costs are to be met by the applicant.

5. STORMWATER DRAINAGE SYSTEM IMPROVEMENTS

5.1 Prior to commencing any site works the applicant shall make application to Council for an assessment of the following:

- (a) **The condition of the stormwater drains** – All stormwater drains shall be inspected, at the applicant's expense, by Council's CCTV inspection camera to ascertain the internal condition of the sewer;
- (b) **The need for additional maintenance holes** – additional maintenance holes may be necessary adjacent to the building to improve emergency operations;
- (c) **The need to renew the stormwater drain** – old or damaged pipes will generally require renewing from property boundary to property boundary;
- (d) **The need to reline the sewer between maintenance hole to maintenance hole.**

5.2 Where the assessments of Condition 5.1 have identified the need for improvements to the stormwater drainage system, the applicant shall liaise with Council to effect these improvements at the applicant's expense.

6. INGROUND SWIMMING POOLS

Due to the special nature of and loads imposed by inground swimming pools, these structures shall not be built over or adjacent to the stormwater system as defined under section 1.4.

6.1 An inground swimming pool must be located clear of the stormwater drain's zone of influence unless the depth of the stormwater is greater than 2.5 m in which case the swimming pool must be offset a minimum of 2.5 m from the stormwater.

6.2 For stormwater drains greater than 225 mm in diameter, the application will be assessed on a case by case basis.

APPENDIX A

Building over Stormwater Application Form



BUILDING OVER STORMWATER APPLICATION

To be completed and returned to enable the issue of a Permit

- 1. Applicant's name:
- 2. Applicant's postal address
- 3. Owner's name:
- 4. Owner's address:
- 5. Site address where work is to be carried out:
- 6. Property description where work is to be carried out:
- 7. New Dwelling Existing Dwelling Other
- 8. We hereby apply for permission to construct the following works: *[Detailed description of works to be carried out]*

NOTE: The applicant recognises that there will be no refund on the application fee once the application has been received.

Signature of Owner:	<input type="text"/>	Date:	<input type="text"/>
Signature of Applicant	<input type="text"/>	Date:	<input type="text"/>

PRIVACY DISCLAIMER:
Mackay Regional Council is collecting your personal information in order to process your application. This information will only be disclosed to any other third party with your written authorisation or as we are required to by law.

For Council Use Only:		
Permit No: _____	Date Issued: _____	Initials: _____
Date Received: _____	Receipt No: _____	Amount Paid: _____
BOAS P/P: _____	Is application signed?: Yes / No	

**Standard Operating Procedure
BUILDING OVER AND ADJACENT TO STORMWATER**

Doc. Code: TES-PRC-???
Version: 1,000

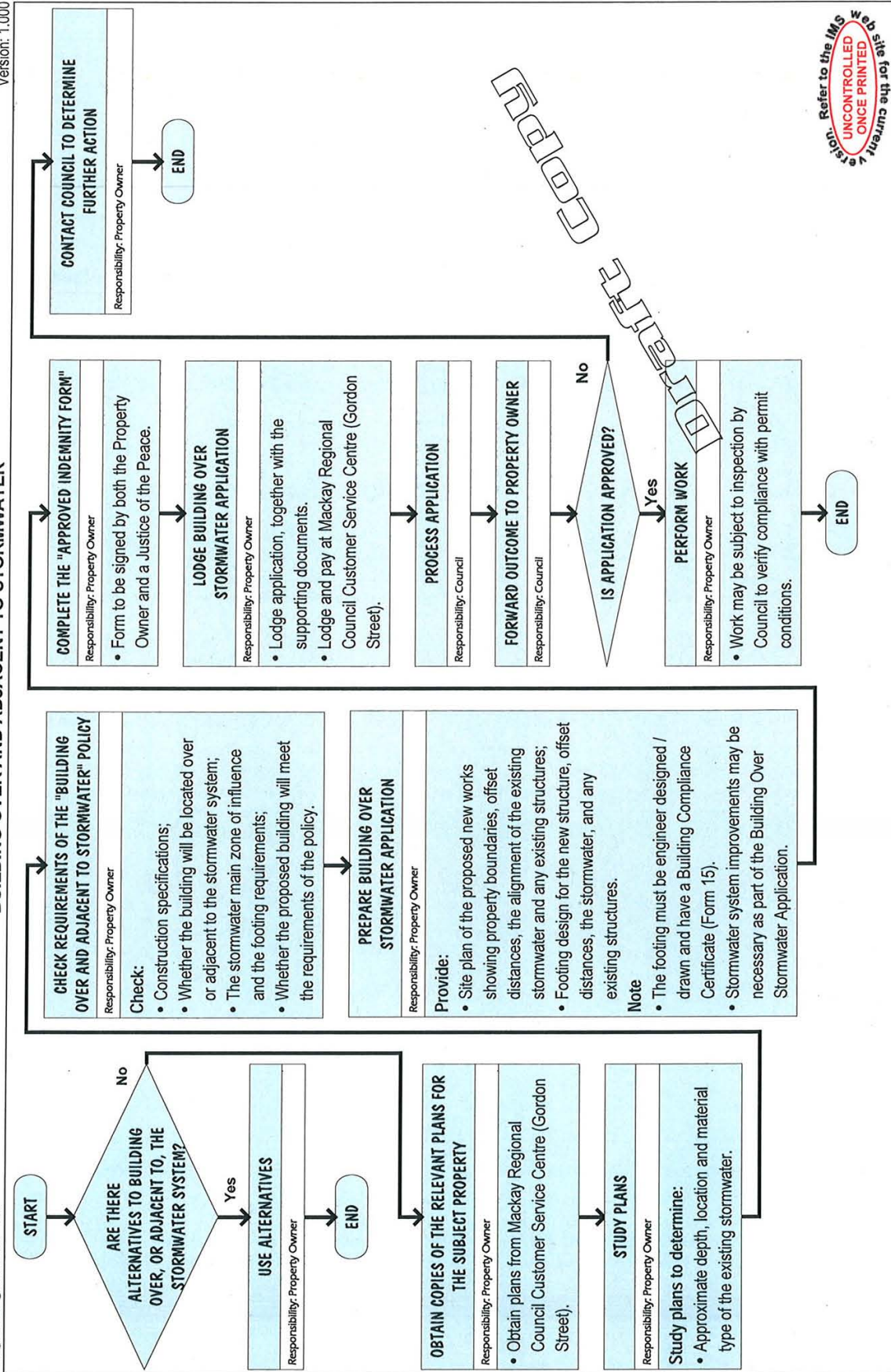
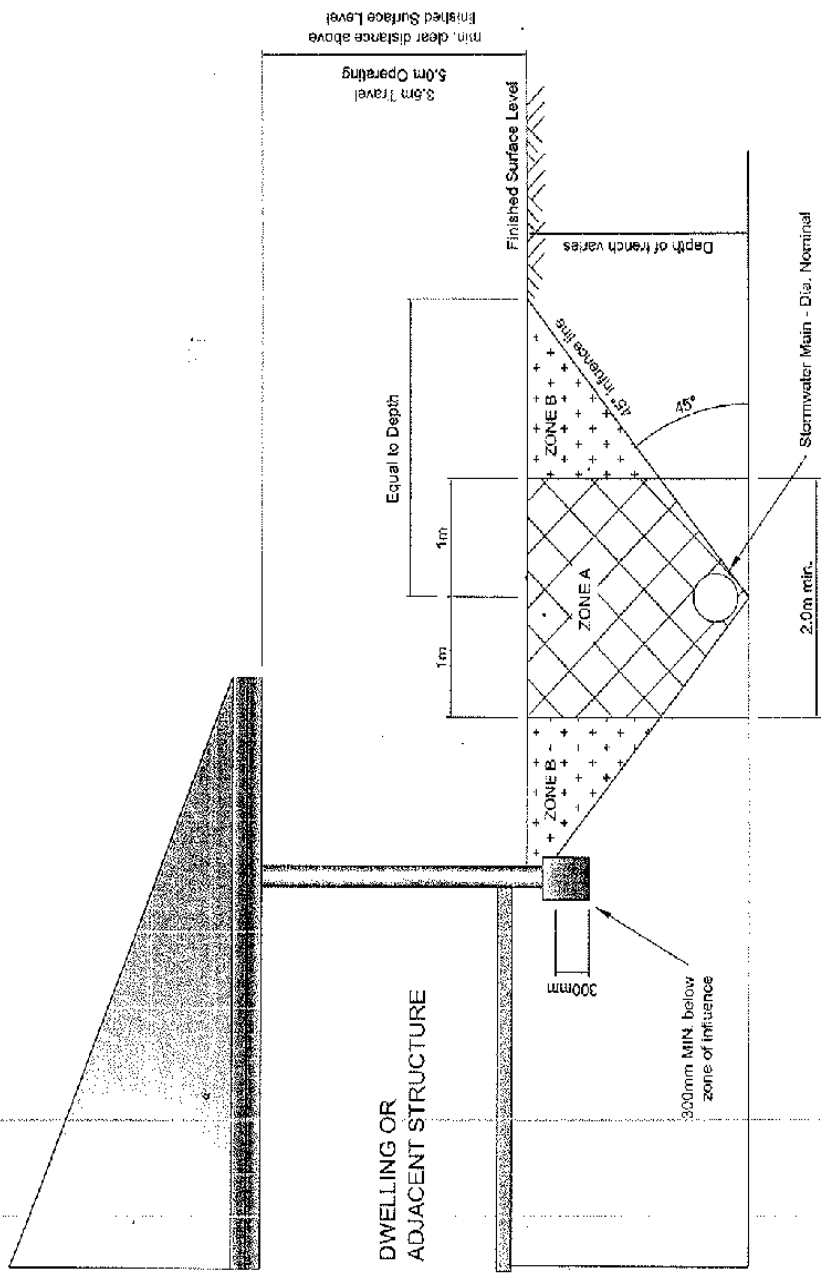


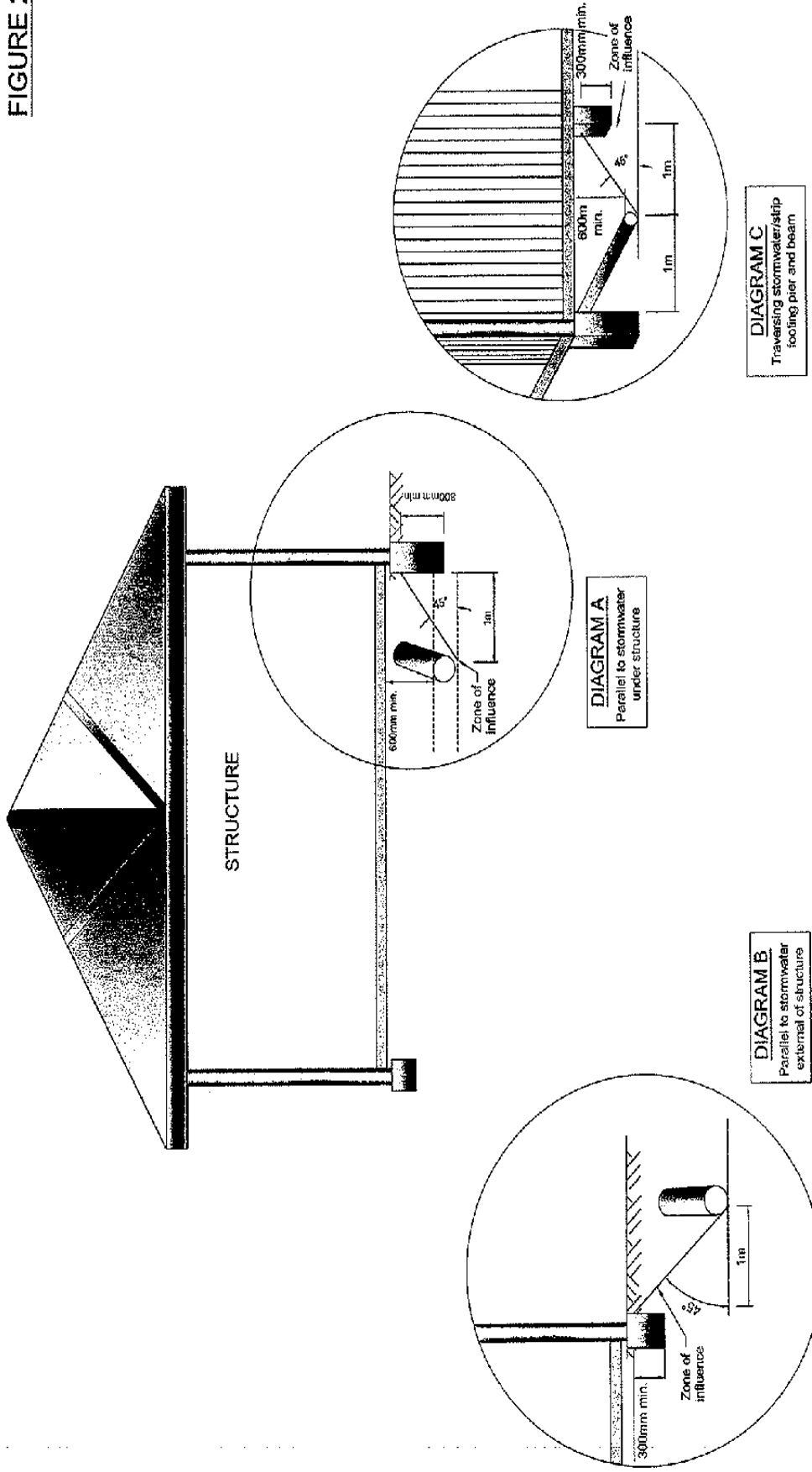
FIGURE 1



NO FOOTINGS PERMITTED IN ZONE A

SURVEY		DRAWN		DATE		DIRECTOR		STANDARD		SHEET 1 OF 1	
SURVEY FILE NO.		DRAWN		DATE		ENGINEERING SERVICES		BUILDING OVER STORMWATER		WORKS JOB NO.	
LEVEL DATUM		CHECKED		DATE		MACKAY SIBLEBY S.M. HOLLEY		EXCLUSION ZONE & DESIGN FOOTINGS		DRAWING NO.	
A.H.D.		MANAGE TECHNICAL SERVICES		DATE		STUART HOLLEY PFC01049		AMEND.		A3-3796	
REVISION		ORIGINAL SIGNED BY / CHANGES		DATE		DATE		AMEND.		A	
FILE NAME		G. HARVEY - APR03.0955		DATE		DATE		AMEND.		A	
A	10/10/09	TITLE BLOCK & MIN. CLEAR DISTANCE REVISED	G.H.D.								
		AMENDMENTS AND REVISIONS									

FIGURE 2



DRAWING FILE NAME
ISTD-DWG\WORKS\A3-3796.DWG

AMENDMENTS AND REVISIONS	
NO.	DATE
DESCRIPTION	APPVD.

DESIGNED
DRAWN
CHECKED
DATE 12/12/07
M.A.S. G. HAWES
C. HAWES
REGD. 5083

MACKAY
CITY COUNCIL

EXECUTIVE MANAGER
INFRASTRUCTURE SERVICES
S. M. HALL
STUART HILL
DATE 14.11.07
PHONE (07) 4966 4477
FAX (07) 4944 2431

**STANDARD
BUILDING OVER STORMWATER
EXCLUSION ZONE & DESIGN
FOOTINGS**

DRAWING No.
A3-3797
AMEND.
SHEET 1 OF 1



APPENDIX B

STANDARD EASEMENT CONDITIONS

EASEMENT

Dealing No.

Stamp Duty Imprint

DRAFT

1. Grantor		Lodger Name, address & phone number		Lodger Code
		SB WRIGHT & WRIGHT and CONDIE Solicitors PO Box 38 MACKAY QLD 4740 Ph: 07-4957 2363		781
2. Description of Easement/Lot	County	Parish	Title Reference	
Servient Tenement (burdened land) EASEMENT * IN LOT * ON SP * *Dominant Tenement (benefited land) NOT APPLICABLE	CARLISLE			
* not applicable if easement in gross				
3. Interest being burdened		*4. Interest being benefited		
FEE SIMPLE		NOT APPLICABLE		
* not applicable if easement in gross				
5. Grantee	Given names	Surname/Company name and number	(include tenancy if more than one)	
		MACKAY CITY COUNCIL		
6. Consideration	7. Purpose of easement			
\$1.00	DRAINAGE			

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of - # the attached schedule # the attached schedule and standard terms document no. # standard terms document no.
#delete inapplicable words

Witnessing Officer	Execution Date	Grantor's Signature
.....signature	/ /
.....full name	
.....qualification	
as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)		

Witnessing Officer	Execution Date	Grantee's Signature
.....signature	/ /
.....full name		Mayor
.....qualification	
as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)		Chief Executive Officer

Title Reference:

This is the Schedule referred to in EASEMENT IN GROSS dated 2007 between
**

1. GRANT OF EASEMENT

The Grantor hereby grants to the Grantee the full and free right and liberty of using the Servient Tenement for drainage purposes and to exercise all powers, authorities and discretions vested in it by law for the passage or conveyance of storm water.

2. GRANTEE'S RIGHTS

2.1 The Grantee has the right at all reasonable times, upon giving prior written notice to the Owner (except in the case of an emergency when no notice will be required) with or without vehicles, machinery, plant and equipment and materials, to enter upon the Servient Tenement to pass and repass along the same at all times for the purposes of using and repairing the Works and in so doing the Grantee's Employees may:

- (1) remove and replace the Works with new Works;
- (2) change the size and number of any pipes forming part of the Works;
- (3) extend, deepen, widen, repair, renew, mow, cleanse, add to, inspect and maintain the Works including altering, replacing, relaying or changing the size, shape or type;
- (4) dig into, sink shafts into and open and break up the soil of the Servient Tenement;
- (5) remove and dispose of soil created as a consequence of the Grantee exercising its rights under this Easement;
- (6) do such other Works and things on or under the Servient Tenement as are incidental to the exercise of the Grantee's rights under this Easement;
- (7) take down any fencing or structure erected on the Servient Tenement.

2.2 In exercising its rights under this Easement the Grantee and the Grantee's Employees will subject to Clause 3:

- (1) exercise the rights in a proper and workmanlike manner so as to cause as little inconvenience and disruption as possible to the Grantor's Land;
- (2) repair any damage it may cause to the surface of the Servient Tenement or adjoining land.

Title Reference:

3. GRANTOR'S OBLIGATIONS

3.1 The Grantor must not without the prior written consent of the Grantee:

- (1) construct or allow to be constructed upon the Servient Tenement any buildings or structures;
- (2) permit the Servient Tenement to be used in such a way as to obstruct or interfere with the Works and/or the proper and effective use of the Works by the Grantee;
- (3) install or have installed any concrete or bitumen paths or driveways on the Servient Tenement or gardens or landscaping using brick, concrete or other permanent materials;
- (4) alter the surface level of the Servient Tenement;
- (5) obstruct, interrupt, impede, impair, or interfere with or divert the flow of storm water drainage along the Servient Tenement and will not change or alter anything done by the Grantee in terms hereof.

3.2 If the Grantor wishes to construct upon the Servient Tenement any building or structure it will provide the Grantee with detailed plans enabling the Grantee to consider the request and the Grantee may in its absolute discretion refuse such request.

3.3 If the Grantee consents to the construction of a building or structure upon the Servient Tenement, the Grantor:

- (a) will ensure that the building or structure is built in a proper and tradesmanlike manner in accordance with the plans submitted to the Grantee and will be maintained so as not to interfere with the Works;
- (b) acknowledges and accepts that the building or structure will be built upon the Servient Tenement at the sole risk of the Grantor and will be used and occupied at the sole risk of the Grantor;
- (c) acknowledges and accepts that it may be necessary for the Grantee to:
 - (i) demolish the whole or part of the said building or structure;
 - (ii) carry out work under or upon the surface of the Servient Tenement which may have an adverse impact upon the said building or structure or interfere with the use and enjoyment of the said building or structure or the land;
- (d) acknowledges and accepts that it cannot make any claim for compensation whatsoever arising from the Grantee exercising its rights under this easement or at law;

Title Reference:

- (e) the Grantee's consent to erection of the said building or structure on the Servient Tenement shall not be deemed in any way an assumption by the Grantee of any obligation towards the Grantor or to any person on the Servient Tenement and the Grantee shall not be thereby deemed to incur any liability.
- (f) indemnifies and will keep indemnified the Grantee against all actions, demands, claims, costs arising in any manner whatsoever from the construction, erection, use or occupation of the said building or structure upon the Servient Tenement.

4. PROPERTY IN WORKS

- 4.1 The Works remain the property of the Grantee despite being fixed to the Servient Tenement.
- 4.2 The Grantee is solely responsible for the maintenance of the Works.

5. GENERAL

5.1 NOTICES

- (1) Any notice under this Easement must be in writing; and
- (2) Either party may serve a notice to the other party by:
 - (a) giving it to that party personally;
 - (b) posting it to the last known address of that party;
 - (c) sending it to the party's facsimile number.
- (3) When served by post a Notice will be deemed to have been received on the second business day after posting and when sent by facsimile will be deemed to have been received at the time at which transmission confirmation is received by the Sender.

5.2 COSTS

The Grantor shall pay the Grantee's costs of and incidental to this Easement, and the Grantor will pay the survey plan and registration fees in respect of this Easement and any plan necessary to effect registration of this Easement.

6. CONSTRUCTION AND INTERPRETATION

6.1 DEFINITIONS

- (1) "**Grantee**" means the Grantee described in item 5 of the form 9 and its successors and assigns;

Title Reference:

- (2) **“Grantee’s Employee’s”** means each of the Grantee’s employees, contractors or other persons authorised by the Grantee;
- (3) **“Grantor”** means the Grantor described in item 1 of the form 9 and includes:
 - (a) the executors, administrators and assigns of the Grantor and each of them;
 - (b) the registered owner for the time being of the Servient Tenement and the land of which it forms part from time to time.
- (4) **“Servient Tenement”** includes any part of the Servient Tenement.
- (5) **“Work”** means:
 - (a) open earth drains, pipes or mains for the purpose of conveying storm water under or over the Servient Tenement together with all other usual and necessary fittings and attachments; and
 - (b) works for the protection and/or support of each of those things.

6.2 CONSTRUCTION

Reference to:

- (1) a person includes:
 - (a) a corporation and governmental body; and
 - (b) the legal representative, successors and assigns of that person;
- (2) a right includes a remedy, authority or power;
- (3) a gender includes all genders;
- (4) the singular includes the plural and the plural includes the singular;
- (5) any Act includes all amendments or substitutions for that Act and the Regulations made under that Act.

6.3 SEVERABILITY

If a provision contained in this Easement is invalid or unenforceable, that provision will, as far as possible, be read down to the extent necessary for it to be valid or enforceable but, if it cannot be read down, it will be severed from the document and the remaining provisions will remain in full force and effect.

6.4 HEADINGS

Title Reference:

Headings are for convenience only and do not effect the interpretation or form part of this Easement.

6.5 LAND TITLE ACT

For the purpose of Division 4 (Easements) of the Land Title Act 1994:

- (a) the Grantee is a public utility provider; and
- (b) this Easement is granted for the purpose of a public utility service.