



LandTasmania

Information regarding Creation of Easements by Schedule of Easements

LAND TITLES OFFICE *VERSION 1 – October 2021*

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EASEMENTS

The law regarding easements is complex. Legal advice should be sought regarding the creation and registration of easements.

1.1 What is an Easement?

In simple terms, an easement is a right to use the land of another in a defined way.

The land with the benefit of the right is called the 'dominant tenement'.

The land with the burden of the right is called the 'servient tenement'.

It is also possible to create an easement without a dominant tenement 'in gross'.

CREATION OF EASEMENTS

2.1 Creation of Easements by Schedule of Easements

2.1.1 Applicable Law

An easement may be created by schedule of easements pursuant to Section 87(2) of the *Local Government (Building & Miscellaneous Provisions) Act 1993* ("LGBMP"). Part 3 of LGBMP should be considered in detail in relation to various issues affecting sealed plans and schedules of easements.

Note: this publication does not discuss sealed plans issued pursuant to the Priority Final Plan scheme (formerly known as 'Early Issue') referred to in sections 88 and 89 of LGBMP.

2.1.2 Required Form and Supporting Documents

- Schedule of Easements form and schedule of easements annexure form (if required);
- Plan of Survey sealed by the relevant municipal Council; and
- The Certificate(s) of Title (if any) for the dominant and servient tenements must be produced.

2.1.3 Plan Requirements

The final plan must clearly define any easement sites referred to in a schedule of easements.

2.1.4 Execution Requirements

- If there are any easements, profits a prendre or covenants set out in a schedule of easements, section 87(2)(a) of the LGBMP requires the schedule to be signed on every page by-
 - The registered proprietor(s) of the folio(s) to the land in the final plan -e.g. the registered proprietor **and** mortgagee(s) (if any);
 - Any other person required to sign to create any easements, profits a prendre or covenants on acceptance of the final plan (for example, owners of any servient land);
 - If there are no easements, profits a prendre or covenants set out in a schedule of easements, the schedule may be signed as above or as provided by section 87(2)(b) of LGBMP by the legal practitioner for the registered proprietor(s) and mortgagee(s);
 - The signatures of the registered proprietor and mortgagees must be appropriately witnessed in accordance with the requirements of the *Land Titles Act 1980* and the *Land Titles Regulations 2012*.

Note: Initials are not sufficient, and a full signature is required. See Land Titles Office (“LTO”) Circular 1/2021 for more information.

- Regulation 13 of the *Land Titles Regulations 2012* should also be considered in relation to appropriate execution and witnessing. A schedule of easements executed by a company must be executed in accordance with the requirements of the *Corporations Act 2001*

2.1.5 Fees

- Payment of the prescribed fee* must accompany a schedule of easements and sealed plan; and
- A prescribed fee is payable for the plan, plus an additional prescribed fee* for each lot created by the sealed plan.

*Current LTO fees can be located at:

<https://dpiwwe.tas.gov.au/land-tasmania/land-titles-office/forms-and-fees/land-titles-office-fees>

2.1.6 Examples

The plans and corresponding schedule of easements for the following examples can be found as separate PDF attachments on the DPIWWE website:

Example 1 – Printed drainage scheme

In order to simplify schedules of easements, the Recorder of Titles has agreed to the use of a printed drainage scheme.

The scheme allows the creation of right of drainage for lots within the plan over the drainage easements shown on the plan. Consequently, when this scheme is used there is no requirement to set out each and every right of drainage for the benefit and the burden of the lots on the plan.

The schedule of easements form contains a printed drainage scheme.

The terms of the scheme are as follows:

Each lot on the plan is together with-

- 1. such rights of drainage over the drainage easements shown on the plan (if any) as may be necessary to drain the stormwater and other surplus water from such lot; and*
- 2. any easements or profits a prendre described hereunder.*

Each lot on the plan is subject to-

- 1. such rights of drainage over the drainage easements shown on the plan (if any) as passing through such lot as may be necessary to drain the stormwater and other surplus water from any other lot on the plan; and*
- 2. any easements or profits a prendre described hereunder.*

The direction of the flow of water through the drainage easements shown on the plan is indicated by arrows.

Please follow this link or refer to Example 1 on the DPIPWE website for an example plan and schedule of easements of a printed drainage scheme.

Example 2 – Statutory short form easements

Section 34A of the *Conveyancing and Law of Property Act 1884* (“CLPA”) provides for short form easements. These may be used in a schedule of easements without the need to include a definition as the terms of these easements are set out in full form in Schedule 8 of the *Conveyancing and Law of Property Act 1884*. Where any variation to the statutory terms is required the terms of the variation will need to be set out in the schedule of easements.

Please follow this link or refer to Example 2 on the DPIPWE website for an example plan and schedule of easements of a statutory short form easement.

Example 3 – Non-statutory easements (full interpretation required to be included in the schedule of easements)

Easements in schedules of easements are not limited to the use of short forms of easements. The term of an easement may be set out at length. If the intention is to create an easement other than one of the statutorily defined easements in Schedule 8 of the CLPA, then a full definition of the

easement must be included in the schedule of easements. Attention is also drawn to the fact that the long form easements set out in Schedule 8 of the CLPA can be extended or varied, however if this is the case then the full definition of the intended easement must be set forth and included in the schedule of easements.

Please follow this link or refer to Example 3 on the DPIPWE website for an example of a plan and schedule of easements where a long form of pipeline right or easement is to be created.

Example 4 – Party wall easements

Section 34B of the CLPA allows for the creation of “party walls” in respect to a wall built or to be built so that the boundary passes or will pass longitudinally through the wall. The expression “party wall” means that the wall is severed vertically along the lot boundary and creates separate ownership with cross easements of support with each building supported having the support of the whole wall.

A common way of describing a party wall easement in a schedule of easements is:

“The wall shown on the plan as “Party Wall” is a “party wall” as defined by section 34B of the Conveyancing and Law of Property Act 1884 and Lots 34 and 35 on the Plan are affected by easements and rights mentioned in that section”.

Refer to Example 4 on the DPIPWE website for an example of a plan and schedule of easements where a party wall easement is to be created.

Please note that the Examples are designed to provide some practical guidance and assistance regarding form. They do not represent legal advice nor do they represent that they are tailored to accommodate or represent every intended easement. Each schedule of easements lodged for registration is examined on an individual basis.

2.2 Creation of Easements by Transfer or by Order of the Recorder

For more information, please refer to LTO publication regarding Creation of Easements by Transfer or by Order.

3. DISCLAIMER

This publication and the Examples referred to in it have been prepared to provide practical guidance and assistance as to form and to the currently approved practices of the Land Titles Office for the lodgement and registration of easements, profits a prendre, restrictive covenants and associated documentation.

This publication and the associated Examples do not constitute legal advice.

The State of Tasmania and its employees do not guarantee that the publication and the Examples are without flaw of any kind or that is wholly appropriate for your particular purposes.

The State of Tasmania disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication or the Examples.

The State of Tasmania and the Land Titles Office take no responsibility for any transaction undertaken in any reliance on the information in this publication or in the Examples. Seek professional legal advice in relation to the correct completion and lodgement of documents.

The information contained in this publication and in the Examples is the practice of the Land Titles Office at the date of publication.

This publication is also subject to the standard [Government Copyright and Disclaimer Notices](#).

4. QUICK LINKS

The Australasian Legal Information Institute www.austlii.edu.au

Tasmanian Legislation Online www.thelaw.tas.gov.au

Department of Primary Industries, Parks, Water and Environment www.dpipwe.tas.gov.au

The LIST (Land Information System Tasmania) www.thelist.tas.gov.au

TOLD (Tasmanian Online Land Dealings)
<https://www.thelist.tas.gov.au/told/index.html?access=public>

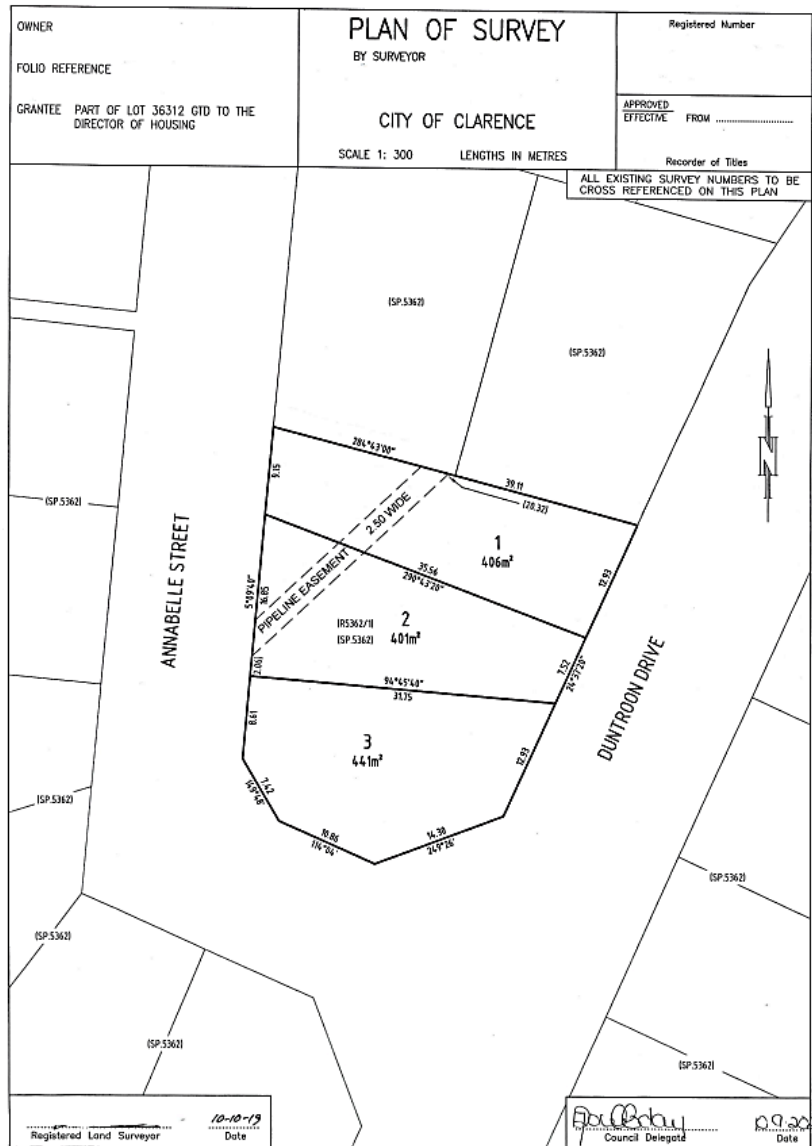
5. EXAMPLES

Example I – Printed drainage scheme

OWNER PETER SMITH	PLAN OF SURVEY		Registered Number				
FOLIO REFERENCE CT 74231/2	BY SURVEYOR JOHN BROWN	LOCATION	SP888888				
GRANTEE PART OF 100 ACRES GTD TO GEORGE BLACK	CITY OF DEVONPORT		APPROVED				
	SCALE 1: 500	LENGTHS IN METRES	Recorder of Titles				
MAPSHEET MUNICIPAL CODE No.	LAST UPI No	LAST PLAN No.	ALL EXISTING SURVEY NUMBERS TO BE CROSS REFERENCED ON THIS PLAN				
<p style="font-size: 1.5em; margin: 0;">EXAMPLE ONLY</p> <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 100px;"> <div style="border: 1px solid black; padding: 5px;">LOT 1</div> <div style="border: 1px solid black; padding: 5px;">LOT 2</div> <div style="border: 1px solid black; padding: 5px;">LOT 3</div> <div style="border: 1px solid black; padding: 5px;">LOT 4</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> SMITH STREET <div style="border: 1px solid black; padding: 2px;"> <table border="1" style="font-size: 0.8em;"> <tr> <td style="width: 20%;">DRAINAGE</td> <td style="width: 20%;">EASEMENT 2'00"</td> <td style="width: 20%;">WIDE</td> <td style="width: 40%; text-align: center;">→</td> </tr> </table> </div> YOUNG STREET </div>				DRAINAGE	EASEMENT 2'00"	WIDE	→
DRAINAGE	EASEMENT 2'00"	WIDE	→				

SCHEDULE OF EASEMENTS	Registered Number SP 888888
NOTE: THE SCHEDULE MUST BE SIGNED BY THE REGISTERED PROPRIETORS & MORTGAGEES OF THE LAND AFFECTED. SIGNATURES MUST BE ATTESTED.	
PAGE 1 OF 1 PAGE/S	
<u>EASEMENTS AND PROFITS</u>	EXAMPLE ONLY
Each lot on the plan is together with:- (1) such rights of drainage over the drainage easements shown on the plan (if any) as may be necessary to drain the stormwater and other surplus water from such lot; and (2) any easements or profits a prendre described hereunder. Each lot on the plan is subject to:- (1) such rights of drainage over the drainage easements shown on the plan (if any) as passing through such lot as may be necessary to drain the stormwater and other surplus water from any other lot on the plan; and (2) any easements or profits a prendre described hereunder. The direction of the flow of water through the drainage easements shown on the plan is indicated by arrows.	
SIGNED BY PETER SMITH THE REGISTERED PROPRIETOR OF THE LAND COMPRISED IN FOLIO OF THE REGISTER VOLUME 74231 FOLIO 2 IN THE PRESENCE OF: WITNESS SIGNATURE NAME: ANNE JONES ADDRESS: 123 YOUNG STREET DEVONPORT	
(USE ANNEXURE PAGES FOR CONTINUATION)	
SUBDIVIDER: Peter Smith FOLIO REF: 74231/2 SOLICITOR & REFERENCE: Basyi Smith (07/12345)	PLAN SEALED BY: DATE: REF NO. Council Delegate
NOTE: The Council Delegate must sign the Certificate for the purposes of identification.	

Example 3 – Non-statutory easements



SCHEDULE OF EASEMENTS	Registered Number
<p>NOTE: THE SCHEDULE MUST BE SIGNED BY THE OWNERS & MORTGAGEES OF THE LAND AFFECTED. SIGNATURES MUST BE ATTESTED.</p>	
PAGE 1 OF PAGE/S	
EASEMENTS AND PROFITS	
<p>Each lot on the plan is together with-</p> <p>(1) such rights of drainage over the drainage easements shown on the plan (if any) as may be necessary to drain the stormwater and other surplus water from such lot; and</p> <p>(2) any easements or profits a prendre described hereunder.</p> <p>Each lot on the plan is subject to-</p> <p>(1) such rights of drainage over the drainage easements shown on the plan (if any) as passing through such lot as may be necessary to drain the stormwater and other surplus water from any other lot on the plan; and</p> <p>(2) any easements or profits a prendre described hereunder.</p> <p>The direction of the flow of water through the drainage easements shown on the plan is indicated by arrows.</p>	
EASEMENTS	
<p>Lots 1 & 2 on the Plan are each subject to a pipeline easement, herein defined, (appurtenant to Lot 916 on SP5362) over the land marked Pipeline Easement 2.50 wide shown passing through such Lots.</p>	
DEFINITION	
<p>'Pipeline Easement' means the right for every person who is at any time entitled to an estate or interest in possession in the land indicated as the dominant tenement or any part thereof with which such right shall be capable of enjoyment in common with the owner of the servient tenement to lay and maintain forever water mains and pipes as shall from time to time be required in the strip of land marked Pipeline Easement 2.50 wide and the right for their surveyors and workmen from time to time and at all times thereafter to enter into and upon the said land or any part thereof bringing upon the Pipeline Easement 2.50 wide such materials machinery and other things as it shall think fit and proper to inspect the balance of the said water mains and pipes and to repair alter amend and cleanse, PROVIDED THAT the rights and privileges hereby granted shall be exercised so as little damage as possible to the exercise of any other rights to which the strip of land is subject; and any damage occasioned to the surface of the strip of land in exercise of the rights and privileges hereby granted shall be made good.</p>	
(USE ANNEXURE PAGES FOR CONTINUATION)	
SUBDIVIDER: FOLIO REF: SOLICITOR & REFERENCE:	PLAN SEALED BY: DATE: REF NO. Council Delegate
<p>NOTE: The Council Delegate must sign the Certificate for the purposes of identification.</p>	

