

The Preferred Approach

The Project is only seeking agreements or easements on those critical sections of upper Brown Hill Creek where creek capacity upgrade works would be carried out, as explained in more detail in the 'Creek Capacity Upgrade Works' information sheet. The Project is not establishing a drainage reserve or easement corridor along the length of upper Brown Hill Creek.

The proposed creek capacity upgrade works can proceed with either agreements or easements in place.

This means that each property owner affected by the works can decide whether they would prefer to be responsible for the ongoing care, control and management of the works, and enter an agreement, OR handover responsibility for the

ongoing care, control and management of the works to the Project through the creation of an easement on their property title.

An easement on an individual property will not affect the rights of adjoining properties.

From the Project's perspective, the creation of easements is the preferred approach as it provides a higher level of certainty over ongoing maintenance of creek capacity upgrade works.

How is compensation calculated for easements?

Under the Land Acquisition Act, property owners are entitled to seek compensation for any losses and reasonable costs associated with the creation of an easement on their property. Compensation is calculated having regard to the value

of the relevant land together with any loss in value to the balance of the land. Such compensation cannot exceed the difference in value (if any) of the affected property before and after creation of the easement. A separate compensation amount is related to the property owner's inconvenience and out of pocket expenses.

Would there be any compulsory acquisition of land to create easements?

Although councils have powers under the Land Acquisition Act to compulsorily acquire easements to implement an approved Stormwater Management Plan, it is the strong preference of the Brown Hill Keswick Creek Stormwater Project and its constituent councils to work with property owners to secure an agreement or easement.

For more information

This information sheet provides a brief explanation of legal arrangements with property owners. Additional information sheets explaining 'Creek Capacity Upgrade Works' and 'Creek Rehabilitation Works' as proposed in the BHKC Part B Report, together with the full report, are available at the Project website:

www.bhkcstormwater.com.au

LEGAL ARRANGEMENTS WITH PROPERTY OWNERS

The **Part B Report**, prepared by the Brown Hill Keswick Creek (BHKC) Stormwater Project, identifies eight flood mitigation options aimed at improving flood protection for homes and properties across the catchment.

All options involve two types of work along upper Brown Hill Creek to reduce the risk of flooding during high stormwater flows:

- 1 **Creek capacity upgrade works** in critical sections (which vary for the eight options) – to increase the capacity of the creek so it can carry more water; and
- 2 **Creek rehabilitation works** along its full length – to assist the flow of water along the creek and improve its biodiversity.

Where creek capacity upgrade works are required, the Project, acting on behalf of the five participating councils, would need to enter into a legal arrangement with affected property owners prior to undertaking any works.

This information sheet outlines:

- Why legal arrangements are required
- Three options for legal arrangements

Why are legal arrangements required before creek capacity upgrade works can be undertaken?

Creek capacity upgrade works involve widening the creek bed and / or modifying the creek banks at critical sections to ensure there is sufficient capacity to convey high stormwater flows.

In undertaking any creek capacity upgrade works on privately owned properties, the Project is required to operate in accordance with the Natural Resources Management (NRM) Act and the Local Government Act.

These Acts enable the Project to undertake works – such as excavation of land or the construction of permanent

infrastructure – for the purposes of stormwater management or flood mitigation provided that, prior to undertaking works, either:

- the owner of the property has agreed to undertake the ongoing care, control of management of infrastructure or works; OR
- the Project has created an easement over the relevant land.

Legal arrangements with property owners are only required if creek capacity upgrade works need to be undertaken on private properties. No legal arrangements are required to undertake creek rehabilitation works. These works would, however, be undertaken in consultation with affected property owners.

What legal arrangements are proposed?

The Project has identified three possible options for legal arrangements.

In all three options, the Project and the property owner would first agree on the form of the creek capacity upgrade works to be undertaken. Works would be constructed at the cost of the Project.

The options vary as follows in relation to responsibility for ongoing maintenance:

- **Option 1:** The property owner agrees to take responsibility for ongoing maintenance of creek capacity upgrade works (at their cost)
- **Option 2:** The Project takes responsibility for ongoing maintenance of creek capacity upgrade works (at its cost) – this option legally requires the Project to create an easement over the relevant land
- **Option 3:** The property owner decides on ongoing maintenance arrangements after the construction works are completed

These are explained in more detail in the table to the right.

As part of the May 2015 consultation process on Part B Works, the Project is seeking feedback from affected creek property owners about these options. Please note that any feedback is without prejudice to final decisions that may be made at a later date. Opinions expressed in this community consultation process are not binding on either the property owners or the Project (or its constituent councils).

What's the key difference between the options?

Option 1 involves the property owner entering into an **agreement** granting consent for creek capacity upgrade works to be carried out, as well as agreeing to undertake (at their cost) the ongoing care, control and management of the works. The agreement is not tied to the property title and is terminated once the property is sold.

Option 2 involves the Project taking out an **easement**, which establishes an area that encompasses the agreed creek capacity upgrade works. The easement is registered on the land title and therefore remains in place on the sale of the property. Where an easement is in

place, the Project retains (at its cost) responsibility for the care, control and management of the creek capacity upgrade works. This is the main point of difference between an agreement and easement.

Option 3 is a 'hybrid' of the above two options, as it allows the property owner to enter into an agreement for the construction of creek capacity upgrade works, and then – within a reasonable time after completion of those works – to decide if they wish to continue the agreement to undertake ongoing maintenance (at their cost) or for the Project to take out an easement as in the above Option 2.

None of the options are likely to impose any more limitations on access to and use of the creek by property owners than already apply under existing NRM legislation; although an easement may include standard conditions suited to the specific local conditions and the form and scope of the creek capacity upgrade works.

OPTION 1	OPTION 2	OPTION 3
<i>Agreement that property owner undertakes and pays for ongoing maintenance</i>	<i>Agreement that the Project undertakes and pays for ongoing maintenance (can only be achieved through the Project creating an easement)</i>	<i>Agreement to construct works, and then decide on ongoing maintenance arrangements</i>
Project develops a plan of works in consultation with the property owner	Project develops a plan of works in consultation with the property owner	Project develops a plan of works in consultation with the property owner
Agreement between the Project and property owner that: <ul style="list-style-type: none"> > the Project constructs works at their cost > the property owner takes responsibility for ongoing maintenance at their cost 	Agreement between the Project and property owners that: <ul style="list-style-type: none"> > the Project constructs works at their cost > the Project creates an easement enabling the Project to take responsibility for ongoing maintenance at their cost 	Agreement between the Project and property owners that: <ul style="list-style-type: none"> > the Project constructs works at its cost > on completion of the works, a further agreement is to be entered into whereby either the <ul style="list-style-type: none"> ◦ property owner agrees to take responsibility for ongoing maintenance at their cost; or ◦ the Project creates an easement enabling the Project to take responsibility for ongoing maintenance its cost.
The agreement is with the current owner.	The Project would describe an area to encompass the agreed works. This area would be registered on the land title as an easement; and would remain in place when the property is sold.	A reasonable time would be allowed for the property owner to decide on either of the above choices.
On sale of the property, the agreement does not automatically transfer to the next owner; however, it would be a condition of the agreement that as part of any transfer of land, the vendor requires the purchaser to agree to be bound by the terms and conditions of the management agreement. Alternatively, the agreement could be registered as an encumbrance on the title.	Under the Land Acquisition Act, property owners are entitled to seek compensation for any losses and reasonable costs associated with the easement. Compensation is calculated having regard to the value of the relevant land together with any loss in value to the balance of the land.	The Agreement would specify that: <ul style="list-style-type: none"> > Until a decision is made, the property owner is responsible for maintenance of the works. > If the property owner does not make a decision within a reasonable time the Project may seek to acquire an easement.
The Project would negotiate with the new owner whether they wished to enter into an agreement (option 1) or allow the Project to create an easement (option 2).	A separate compensation amount is related to the landowner's inconvenience and out of pocket expenses.	