

# DRAINAGE RESERVES DISPOSAL POLICY [DRAFT]

## 1.0 PURPOSE

The Drainage Reserves Disposal Policy provides an effective, equitable and transparent framework governing the circumstances and means by which Canterbury-Bankstown Council (Council) will assess and process requests for acquisition and/or disposal of its drainage reserves.

## 2.0 SCOPE

This Policy applies to all drainage reserves in the Canterbury-Bankstown Local Government Area classified as Operational Land under the *Local Government Act 1993*.

## 3.0 POLICY STATEMENT

### 3.1 Principles

This policy ensures that Council will apply a considered approach to managing all requests for acquiring and/or disposing of any drainage reserve:

- a) in accordance with relevant legislation, guidelines, appropriate transparency and overall good governance.
- b) having regard to Council's broader asset and financial management obligations, whilst also taking into account its exposure to associated risks, liabilities and social responsibilities.
- c) within a structured and consistent framework which ensures all decisions are equitable and above all in the public interest.

### 3.2 Application

This Policy is relevant when:

- a) determining whether or not particular drainage reserves (or part thereof) are suitable for sale.
- b) facilitating the sale of drainage reserves identified as being suitable for sale.
- c) protecting Council's rights by way of an easement to enter the land to carry out work.
- d) maintaining overland flow paths for stormwater.
- e) ensuring that all drainage reserves once sold are consolidated with the purchasers' property.

Interested parties can only purchase a drainage reserve where their parcel of land shares a common boundary with the drainage reserve.

All net proceeds generated through the application of this Policy will be restricted and held in Council's Land Investment Fund.

Drainage reserves can only be sold following a resolution of Council authorising the sale.

### **3.3 Assessment of Drainage Reserves**

Drainage reserves that are classified as Operational Land under the provisions of the *Local Government Act 1993* will only be considered for sale in accordance with this Policy.

In determining the suitability for disposal of drainage reserve land, Council will consider all relevant aspects including the applicable Local Area Plan, Planning Instruments and/or other adopted land use strategies, such as:

- a) Council's Asset Management Strategy, Flood Studies, Flood Plain Risk Management Studies and other relevant material; and
- b) Other material factors, including (but not necessarily limited to) the following:
  - i. Historical, current and future use of the land
  - ii. Underground infrastructure and its effect on subdivision pattern
  - iii. Annual cost of maintenance
  - iv. Potential impact the disposal of the land or interests in land may have on the community
  - v. Any impact the disposal of the land or interests in land may have on the operations of Council
  - vi. Cultural or historical significance of the land
  - vii. Benefit and risk analysis of the proposed disposal
  - viii. Restrictions on the proposed disposal.

### **3.4 Disposal of Drainage Reserves**

Where a request is received, or Council identifies a drainage reserve as surplus to its requirements:

- a) All owners of land adjoining the drainage reserve proposed to be sold will be advised in writing of the proposed sale and given the opportunity to purchase the reserve or part thereof; and
- b) A valuation of the land comprising the drainage reserve will be undertaken by a registered valuer on the basis of the highest and best use for the value of that land to the adjoining owners.

When multiple responses are received to purchase the same drainage reserve, Council will liaise with the parties and prepare a draft plan of subdivision to allow the reserve to be subdivided as equitably as is possible in the particular circumstances between the parties, having regard to:

- a) Council's requirements (including public interest)
- b) request(s) of adjoining owners
- c) access requirements
- d) the extent to which each party shares its boundary with the drainage reserve.

Where a drainage reserve is unable to be subdivided and must be sold as one lot:

- a) all owners of land adjoining the drainage reserve will be advised and given the opportunity to submit a bid to Council for its purchase.
- b) The valuation amount will be disclosed to the interested adjoining owners with an invitation to lodge a first and final bid by a closing time determined by Council. In these circumstances, the highest bid (should it be equal to or greater than the independent valuation carried out) will be accepted.

Following acceptance of an offer to sell and Council's terms, a report to Council will be prepared recommending a course of action for Council's determination in relation to the land's disposal. In determining its decision, Council at all times retains its right to retain or sell, and to whom, any drainage reserve.

### **3.5 Associated Costs with Administering the Policy**

All valuation costs will be borne and/or met by the person(s) who request and/or express an interest in purchasing any drainage reserve in accordance with this Policy.

On occasions when Council disposes of a drainage reserve, these costs or part thereof may be refunded to the purchaser as a deduction from the purchase price (or reimbursed to the party making the request, if sold to another party) on settlement of the conveyance.

All costs associated with the sale of a drainage reserve, including legal and survey costs and application fees, are to be borne by the purchaser(s). The purchaser(s) will pay these estimated costs up front prior to Council commissioning any required services, with all costs being reconciled at settlement.

### **3.6 Drainage Reserves Occupied (under Licence or otherwise)**

Where drainage reserves are occupied by way of a licence or otherwise, Council will assess and dispose of those drainage reserves in accordance with this Policy.

Should both the current occupants of the drainage reserve and the adjoining property owner(s) decide not to purchase the drainage reserve and the drainage reserve is licensed, then existing licencing arrangements will be maintained.

Should both the current occupier of the drainage reserve and the adjoining property owner(s) decide not to purchase the drainage reserve and the drainage reserve is occupied without a licence, then licencing arrangements will be entered into with the current occupant.

If the current occupant refuses or fails to enter into licencing arrangements, a licence will be offered to the other adjoining owner(s). Failure or refusal to enter into the licence in these circumstances will result in the carrying out of a review of circumstances, including applying any relevant regulatory process, as required.

### 3.7 Encroachments on Drainage Reserves

Any encroachments on drainage reserves will be addressed in accordance with the relevant provisions of the Local Government Act 1993 and associated Regulation(s).

## 4.0 RELATED RESOURCES

### 4.1 Legislation

- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*

### 4.2 Associated Documents

- Code of Conduct
- Statement of Business Ethics
- Independent Commission Against Corruption 'Guidelines for Managing Risk for Direct Negotiations' (2006)

### 4.3 Definitions

<b><i>Drainage Reserve</i></b>	A parcel of Council owned freehold land, operationally classified and identified as a drainage reserve by a current plan registered with the NSW Department of Land and Property Information.
<b><i>Drainage Easement</i></b>	An instrument registered on the title of a property that details rights in regard to, access to and maintenance of, stormwater pipes and/or other drainage facilities, for the owner of those pipes and/or facilities.
<b><i>Positive Covenant</i></b>	An instrument registered on the title of a property that creates and details an obligation for the new owner of the land to carry out (relevantly in the case of drainage reserve sales) a specific development on or with respect to the land (namely, title consolidation).

***Restriction on the  
Use of Land***

An instrument registered on the title of a property that creates and details restriction/s that apply to an owner'(s)' ability to use or deal with the land.

## 5.0 POLICY OWNER

Manager Property and Investment

## 6.0 AUTHORISATION

Adopted by Canterbury-Bankstown Council on [DD MONTH YEAR](#).