

DRAINAGE RESERVES ADMINISTRATION POLICY

1.0 PURPOSE

The Drainage Reserves Administration 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 and for the granting of certain easement rights over 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 disposing and administering of an applicable 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) ensuring that all affected parties are appropriately consulted.
- d) within a structured and consistent framework which ensures all decisions are equitable and above all in the public interest.
- e) ensure impartiality by addressing perceived or actual conflicts of interest.

3.2 Application

This Policy is relevant when:

- a) determining whether or not a particular drainage reserve (or part thereof) is suitable for sale.
- b) facilitating the sale of any drainage reserve 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 any drainage reserve land once sold is consolidated with the purchaser's property.

- f) Calculating compensation to be paid to Council where a private property owner seeks to create a easement over a drainage reserve.

Interested parties can only purchase a drainage reserve where their parcel of land shares a significant 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.

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

3.3 Assessment of Drainage Reserves

Only drainage reserves that are classified as Operational Land under the provisions of the *Local Government Act 1993* will 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.
 - ix. The broader implications that a disposal would have on the whole drainage reserve.
- c) Determining the most effective and/or optimum arrangement for the whole drainage reserve.

3.4 Disposal of Drainage Reserves

Where Council receives a request to acquire a drainage reserve, it will assess the request in accordance with clause 3.3 of this Policy. Where Council identifies such a drainage reserve as being surplus to its requirements following its assessment and elects to dispose of all or part of the reserve:

- 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 subject part thereof; and
- b) A valuation of the relevant drainage reserve land will be undertaken by a registered valuer on the basis of the highest and best use for the land.

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

- a) Council's requirements (including public interest)
- b) request(s) received from 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 that shares a significant boundary with 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 any drainage reserve.

Where Council itself has assessed that a drainage reserve is surplus to its requirements and elects to dispose of the reserve otherwise than in a response to a request, it will apply and adhere to the provisions of this Policy.

3.5 Associated Costs with Disposal of Drainage Reserves

All valuation costs will be borne and/or met:

- A. In the event of the sale proceeding, by the purchaser; or
- B. In the event a sale does not eventuate, by each party who requested and/or expressed an interest in purchasing any drainage reserve in accordance with this Policy in equal shares.

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).

3.8 Minor Easements over Drainage Reserves

Council has the same discretions as any other owner of real property in New South Wales, including the ability to grant easements over its real property. In this context, from time-to-time Council is requested to grant easements for services over land under its care and control. The easements are in favour of land adjoining the Council land and usually arise in the context of redevelopment proposals with respect to that land.

Recent experience has demonstrated that when approached by an adjoining owner for the grant of a less significant easement right to burden land under the care and control of Council, the cost to the requesting party, in having the easement's value for commercial consideration purposes assessed by a registered valuer, is greater than the easement's value itself. Consequently, in the case of less-significant easements Council will charge a set fee as outlined in the Schedule of Fees and Charges. The applicant will be responsible for all other costs associated with the creation/ modification of the easement including the legal, stamp duty, registration and other costs.

3.9 Significant Easements over Drainage Reserves

If a proposed easement is considered a significant drainage easement, the value of the proposed easement would then instead be determined by means of an assessment by a registered valuer. The applicant will be

responsible for the valuation costs and all other costs associated with the creation/ modification of the easement including the legal, stamp duty, registration and other costs.

4.0 RELATED RESOURCES

4.1 Legislation

- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*
- *Real Property Act 1900*
- *Conveyancing Act 1919*

4.2 Associated Documents

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

4.3 Definitions

<i>Drainage Reserve</i>	A parcel of Council owned freehold land, operationally classified and identified as a drainage reserve by a current plan registered with the NSW Land Registry Services.
<i>Drainage Easement</i>	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.
<i>Minor Drainage Easement</i>	Is less than 10 square metres in area, is in a form that accords with that expression prescribed by Schedule 8 of the Conveyancing Act- "Easement to drain water", is located in a part of the reserve capable of being regarded as inconspicuous (a proposed easement is capable of being regarded as inconspicuous if it is to be located such that it immediately adjoins and is parallel to an existing or notional future boundary of the drainage reserve portion over which it is to stand) and the drainage reserve itself is one that, if sold, would be sold on the basis of Council beforehand first establishing thereon, a full-extent easement in gross in its favour for drainage purposes.
<i>Positive Covenant</i>	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).
<i>Restriction on the</i>	An instrument registered on the title of a property that creates and details

Use of Land

restriction/s that apply to an owner'(s)' ability to use or deal with the land.

***Significant Drainage
Easement***

Is greater than 10m²; and/or proposed to be located in a conspicuous or obtrusive section of the drainage reserve portion; and/or proposed to be created over a drainage reserve that is one that could be sold by Council without first encumbering it with a drainage easement in its favour.

5.0 POLICY OWNER

Manager Property and Investment

6.0 AUTHORISATION

Adopted by Canterbury-Bankstown Council on XXXXX