



Title: Disposal of Council-Owned Drainage Reserves

Category: Strategic – Governance - Policy

Key words: Drainage reserve, sale, easement, adjoining owners, valuation, costs

File number: L-82-24, C-116-7

Policy owner: Director Corporate Services

Authorisation: Adopted by CSC 8 May 2008 (Minute 97)

Review date: 1 July 2009

Modification history: The original policy was adopted on 20 October 1994 (Min No. 354)

Related legislation: -

Related policies: -

Contents:

1. Purpose
2. Objectives
3. Scope
4. Definitions
5. Principles
6. Responsibilities
7. Procedures

1. Purpose

The purpose of this policy is to describe both the circumstances and the way in which council will dispose of its drainage reserves.

2. Objectives

The objectives of this policy are to:

- Identify drainage reserve land that may be suitable for sale;
- Determine whether or not particular drainage reserves are suitable for sale;
- Facilitate the sale of drainage reserves identified as being suitable for sale;
- Preserve Council's rights to enter the land to be sold and to carry out work by creating a drainage easement over the land;
- Reduce Council's maintenance and other holding costs by selling land surplus to requirements.

3. Scope

This policy applies to all Councillors, staff and members of the public involved in the disposal of Council's drainage reserves.

4. Definitions

Drainage Reserve – Parcel of Council-owned freehold land, operationally classified, identified as a drainage reserve by a current plan registered with the NSW Department of Land and Property Information.

Drainage Easement – An instrument registered on the title of a property that details rights in regard to access to and maintenance of stormwater pipes or other drainage facilities, for the owner of those pipes and or facilities.

5. Principles

5.1 Authority

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

5.2 Eligibility

Only drainage reserves that are classified as operational land under the provisions of the Local Government Act 1993 are legally capable of being sold.

6. Responsibilities

Councillors are responsible for communicating and supporting the policy. Councillors are also responsible for determining whether or not a drainage reserve is to be sold based on information provided to them by Council staff in a council report.

Director City Works is responsible for making recommendations concerning the appropriateness of selling particular drainage reserves.

Director Corporate Services is responsible for identifying drainage reserves capable of sale and for implementing procedures detailed below.

7. Procedures

7.1 Unoccupied Drainage Reserves

- 7.1.1 All owners of land adjoining a section of drainage reserve proposed to be sold will be advised in writing of the proposed sale and given the opportunity to purchase an area of the Reserve proportionate to the extent that their property adjoins the Reserve.
- 7.1.2 Where a Drainage Reserve is to be sold in one piece (i.e. not divided into separate sections) all owners of land adjoining the Drainage Reserve will be advised in writing of the sale and given the opportunity to submit a bid to Council for its purchase. In these circumstances, the highest bid (should it be equal to or greater than the independent valuation carried out) will be accepted.
- 7.1.3 Should a person/s request to purchase the Drainage Reserve, the land comprising the Drainage Reserve shall be valued by a registered valuer. Valuation costs will initially be met by the person/s seeking to purchase the land. However, these costs will be refunded to the purchaser by Council as a deduction from the purchase price on settlement of the conveyance.
- 7.1.4 Other costs associated with the sale of a Drainage Reserve including legal and survey costs and application fees are to be borne by the purchaser.
- 7.1.5 A report is to be prepared for Council on the proposal to sell the Drainage Reserve.
- 7.1.6 Should Council resolve to sell the Drainage Reserve:
 - (a) Drainage Easement is to be prepared and registered on the title of the property that authorises the continual presence and/or operation of Council's drainage facilities in the land, guarantees Council's access for the purposes of re-laying, repairing, maintaining or laying pipes in the land and provides for any other relationships deemed appropriate in particular circumstances.

- (b) A condition will be placed on the sale requiring the land forming the Drainage Reserve to be consolidated with the purchaser's adjoining property to preclude the purchaser subsequently selling off the land purchased as a lot separate to their main holding.

7.2 Drainage Reserves Occupied (under Licence or Otherwise)

- 7.2.1 Write to the current occupant advising that Council would like to offer the land for sale to them (subject to the terms of this policy) and that the offer of sale is open for acceptance for a period of 60 days. Also advise that if they do not wish to purchase the land we may offer it for sale to the non-occupying adjoining land owner.
- 7.2.2 If the offer to sell lapses or is rejected by the current occupant, write to the non-occupying adjoining owner advising that we are prepared to sell the land to them subject to the terms detailed in this policy.
- 7.2.3 Should a person/s request to purchase the Drainage Reserve the land comprising the Drainage Reserve will be valued by a registered valuer. Valuation costs will initially be met by the person/s seeking to purchase the land. However, these costs will be refunded to the purchaser by Council as a deduction from the purchase price on settlement of the conveyance.
- 7.2.4 Other costs associated with the sale of a Drainage Reserve including legal and survey costs and application fees are to be borne by the purchaser.
- 7.2.5 Following acceptance of the offer to sell and the terms of sale by either the current occupant or a non-occupying adjoining owner, a report to Council will be prepared, recommending a course of action for Council's approval related to the land's disposal.
- 7.2.6 Should Council resolve to sell the Drainage Reserve:
 - (a) A Drainage Easement is to be prepared and registered on the title of the property that authorises the continual presence and/or operation of Council's drainage facilities in the land, guarantees Council's access for the purposes of re-laying, repairing, maintaining or laying pipes in the land and provides for any other relationships deemed appropriate in particular circumstances.
 - (b) A condition will be placed on the sale requiring the land forming the Drainage Reserve to be consolidated with the purchaser's adjoining property to preclude the purchaser subsequently selling off the land purchased as a lot separate to their main holding.
- 7.2.7 Should both the current occupant of the drainage reserve and the adjoining property owner decide not to purchase the drainage reserve and the Drainage Reserve is licenced, then existing licencing arrangements will be maintained.

- 7.2.8. Should both the current occupier of the drainage reserve and the adjoining property owner 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 refuse or fail 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 action by Council to re-enter into possession of the subject land.
- 7.2.9 Should the current occupier of the drainage reserve be a pensioner, and the cost of purchasing the drainage reserve is prohibitive, then the current licencing conditions may be continued in these circumstances.