

Purpose	To guide how public open space is provided, the location of public open space and the basis on which Council accepts land for public open space or a cash contribution in lieu of it, in subdivision developments.	
Department	Development Services	
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POLICY

1 Purpose

The purpose of this policy is to:

- provide a strategic approach regarding the acceptance of land for public open space (POS) allocated from new subdivisions;
- clarify the process regarding the provision of 'cash-in-lieu' contributions, instead of land, from new subdivisions; and
- provide guidance on how funds obtained through 'cash-in-lieu' contributions may be allocated.

2 Scope

This policy applies to all applications for subdivision of land within the Flinders Municipality and has been prepared with reference to the *Local Government (Building and Miscellaneous Provisions) Act 1993* (the **Act**) and the Tasmanian Planning Scheme incorporating the Flinders LPS as adopted 2022.

3 Definitions

Act is the *Local Government (Building and Miscellaneous Provisions) Act 1993*

Council is the Flinders Council;

Planning Scheme is the *Tasmanian Planning Scheme – Flinders*, and

Public Open Space is defined by the Planning Scheme as 'space for public recreation or public gardens or for similar purposes'.

4 Objectives

The objectives of this policy are to:

- 4.1 provide a consistent approach to the acceptance of POS, or alternatively to the payment of cash-in-lieu of provision of POS;
- 4.2 provide clarity to permit applicants so they may understand how Council approaches POS and cash-in-lieu contributions in the context of subdivision;
- 4.3 guide the management of accumulated cash-in-lieu contributions; and
- 4.4 accommodate exceptional circumstances that justify alternative methods where they do not affect the integrity of this policy.

5 Related Policies and Legislation

- *Local Government (Building and Miscellaneous Provisions) Act 1993*
- *Land Use Planning and Approvals Act 1993*
- *Local Government Act 1993*
- Tasmanian Open Space Policy and Planning Framework

6 Policy

6.1 Consideration of Public Open Space through Subdivision Process

In considering any subdivision proposal, the question of POS will be assessed on the merits of each application. Generally, where a subdivision proposal generates an additional need for POS, a contribution will be required by way of either:

- a) a transfer to Council of up to 5% of the area of the relevant land to be used as POS in accordance with s116 of the Act; or
- b) a cash-in-lieu arrangement or a security and bond requirement determined in accordance with s117 of the Act.

6.1.1 Council will consider if land to be contributed complies with the current strategic values of Council at the time the application is made, considering Council's capacity to financially and effectively manage the land for the intended purpose.

6.1.2 Land to be used for stormwater management, including natural watercourses or land required for infrastructure shall not be accepted as a land for POS contribution.

6.1.3 A proposal for a boundary adjustment (particularly a minor adjustment) generally will not generate a need for POS, but each application must be assessed on its own merit.

6.2 Cash/Security

In accordance with the provisions of section 117 of the Act, Council may require a cash-in-lieu arrangement or a security and bond requirement determined in accordance with s 117 of the Act rather than a contribution of land towards POS.

6.2.1 Cash contributions and security arrangements under s117 of the Act must be supported by a valuation of the relevant land, and in Tasmania the current state of the law is that this valuation must be of the improved land as at the date the final plan is submitted to Council for assessment (see *N Leary v Clarence City Council* [2013] TASRMPAT 68 & *DK & IB Gourlay v Clarence City Council*[2016] TASRMPAT 37).

6.2.2 Applicants submitting a plan of subdivision will be notified of the required contribution (as detailed in 6.2.3) within 21 days of their application being accepted.

- 6.2.3 The Council, or its delegate, will determine which of the following is most appropriate:
- a) up to a 5% contribution of land from the parent title that meets the principles of this policy; or
 - b) a cash contribution or security arrangement in lieu of the provision of land for POS; or
 - c) a combination of land and cash-in-lieu; or
 - d) if any additional land is required.

6.3 Cash Contributions Received

All monies received will be held on trust by Council in the Public Open Space Contributions Account and interest earned on the account will be rolled over into that account (per the Act, s117(5)).

6.4 Cash Contributions Expended

Monies held on trust:

- a) can be used by a council to:
 - (i) acquire new land for use as public open space; or
 - (ii) improve existing undeveloped or underdeveloped land already owned or managed by Council and dedicated for use as public open space.
- b) can be applied towards the provision of public open space anywhere in the municipal area; and
- c) cannot be applied to recurrent expenditure such as the general maintenance of public open space

Expenditure of funds from the public open space account will be decided via a resolution of Council. For example, monies held on trust may be applied towards the improvement of existing, or the establishment of new, recreational areas such as:

- Sportsgrounds;
- Recreational linkages through, or to, townships such as tracks and footpaths;
- Access and vantage points;
- Parks including skate parks and bike tracks;
- Landscaping;
- Conservation and weed control;
- Waterway management; and
- Cemeteries.

6.5 Unique Circumstances

Any deviation from this policy must be put to Council for their consideration at an Ordinary Meeting.

7 **Legislation**

Local Government (Building and Miscellaneous Provisions) Act 1993

7.1 The Act enables Council to:

- a) Require a subdivider to provide to Council, as public open space, up to 5% of the land being subdivided; or
- b) Require public open space in excess of the 5% contribution as a part of any subdivision proposal subject to appropriate compensation; or
- c) Condition the subdivider to provide up to 5% cash-in-lieu/security contribution of the value of the land being subdivided (less any area provided as public open space); or
- d) Refuse a subdivision if it is of the opinion that the proposal should be altered to include (or omit) public open space.

8 **Responsibility**

The responsibility for the operation of this policy rests with the General Manager. Advice on the appropriateness of land for strategic open space purposes will be obtained from the Development Services Department by referral of subdivision applications.