

Public Open Space Contributions

Policy

January 2019

Table of Contents

DEFINITIONS	3
LEGISLATION AND COUNCIL PLANS	3
PURPOSE OF THE PUBLIC OPEN SPACE CONTRIBUTIONS POLICY	4
BACKGROUND	5
ELEMENTS OF THE POLICY	6
1 PRINCIPLES.....	6
2 APPLICATION OF THE POLICY	7
RESPONSIBILITIES.....	10
REVIEW	10

DEFINITIONS

Improvement is defined by the *Local Government (Building and Miscellaneous Provisions) Act 1993* as ‘...landscaping, fencing and the provision of playground equipment, walking paths, car parking areas and toilet facilities’.

New works are those works which create a new asset that did not previously exist or works which upgrade or improve an existing asset beyond its existing capacity.

Public open space is defined by the *Local Government (Building and Miscellaneous Provisions) Act 1993* as ‘space for public recreation or public gardens or for similar purposes’.

LEGISLATION AND COUNCIL PLANS

This Policy was developed with reference to the following legislation and Council or other public documents:

- . *Local Government (Building and Miscellaneous Provisions) Act 1993* (LGBMP);
- . Central Coast Council Strategic Plan 2014–2024;
- . Central Coast Open Space and Recreation Plan 2012–2022;
- . Central Coast Open Space and Parks (including Playgrounds) Asset Management Plan 2015;
- . *Central Coast Interim Planning Scheme 2013* (Planning Scheme); and
- . Cradle Coast Authority – North West Tasmania Coastal Pathway Plan 2010.

This Policy was also developed with consideration to the contemporary legislative requirements to do with the approval of subdivisions under LGBMP and for the approval of permits for development, including subdivision, under the Planning Scheme. These considerations have included Tasmania Supreme Court rulings about the basis for Open Space requirements for subdivision and planning permits, such as *Clarence City Council v Resource Management and Planning Appeal Tribunal* [2018] TASSC 41 (7 September 2018).

There is a clear statutory basis for a Council to require Open Space to be created in the course of approving a subdivision where a Council has formed a view that Open Space is desirable for the purposes of the subdivision. Similarly, a Council can, where it has formed the view that the mandatory provision of Open Space is not warranted, instead call for the subdivider to make a mandatory cash contribution to the Council in lieu of the provision of Open Space. One reason for this alternate might be that increased density of lots for dwellings is such that there will be greater demand for public areas and thus these areas will need improvements over time that can be part funded by cash in lieu.

Section 85 of LGBMP is relevant to this Policy as S.85 gives the Council an unfettered discretion about open space.

Public Open Space Contributions Policy

It provides for a number of circumstances in which *"(a) Council may refuse to approve a plan of subdivision"*. Section 85(d)(iii) provides that: *"The council may refuse to approve a plan of subdivision if it is of the opinion...(d) that the layout should be altered to include or omit...(iii) public open space..."*

LGBMP Section 117 provides that instead of requiring the provision of public open space, a Council can require the payment of a cash sum. It is specially provided that this amount is to be held by the Council, S.117(5) states *"...for the acquisition or improvement of land for public open space for the benefit of the inhabitants of the municipal area"*.

Section 116 provides for the requirement that the Council must purchase public open space in excess of an area of 5% of the land, where that requirement has been made to a subdivider.

LGBMP S.85A(1) provides that a Planning Scheme may specify performance criteria in relation to subdivisions that relate to a matter referred to in S.85, and may enable a discretionary permit to be issued if such performance criteria are complied with in relation to a plan of subdivision. Where a Planning Scheme has provisions that relate to a subdivision, the permit application is to be assessed by the Council by reference solely to the provisions of the Planning Scheme.

The Planning Scheme in force at the time of this Policy does not contain open space performance criteria provisions for subdivisions. Consequently, this Policy is to provide the Council with guidance and consistency in its decision making about Open Space as it exercises its discretion under S.85 and also as to the application of funds received as cash in lieu of Open Space.

PURPOSE OF THE PUBLIC OPEN SPACE CONTRIBUTIONS POLICY

The ongoing investment in financial and human resources made by Central Coast Council in the provision and improvement of public open space and recreation assets is significant.

The purpose of this Policy is to provide direction for the Council in the implementation of its powers and obligations in respect to public open space under the provisions of the *Local Government (Building and Miscellaneous Provisions) Act 1993* (the Act) and provide that public open space or cash-in-lieu that is taken as part of subdivision complies with the Central Coast Open Space and Recreation Plan 2012–2022 and the Central Coast Open Space and Parks (including Playgrounds) Asset Management Plan 2015.

The Policy will:

- 1 assist in achieving key objectives of the Council's Asset Management Policy 2017 objectives:
 - Ensure that the Council's services and infrastructure are provided in a sustainable manner, with the appropriate levels of service to residents, visitors and the environment.

- Safeguard the Council's assets including physical assets and employees by implementing appropriate asset management strategies and appropriate financial resources for those assets.
 - Ensure compliance with legislative requirements for asset management.
 - Ensure resources and operational capabilities are identified and responsibility for asset management is allocated.
 - Demonstrate transparent and responsible asset management processes that align with demonstrated best practice.
 - Continuous improvement and to seek innovative ways of meeting service delivery requirements.
- 2 provide a set of guidelines as to when the Council will request the provision of public open space contribution, whether through the mandatory provision of land or cash-in-lieu contributions;
 - 3 provide a methodology of the calculation of a cash-in-lieu contribution; and
 - 4 provide a set of guidelines for the use of funds held in trust for the acquisition or improvement of land for public open space.

BACKGROUND

Each of Central Coast's towns, villages and rural areas have different characteristics, including varying open space and recreational requirements. In the planning of residential areas, both the Council and developers are to ensure there is an appropriate consideration, provision, location and design of public open space areas and recreation facilities across the municipal area.

Open space is categorised into three levels – Local, District and Regional– as follows;

Local open space

This form of open space primarily provides for neighbourhood playgrounds that service the residents of a particular suburb or locality. The Central Coast Open Space and Recreation Plan 2012–2022 identifies those areas that need local open space provision.

District open space

This form of open space is characterised as larger areas of open space that service the whole of the Central Coast community. Examples include the walkway/cycleway from Turners Beach to Ulverstone, Hiscott Park, Fairway Park and Anzac Park.

Regional open space

This form of open space is characterised as expansive areas of open space that attract users from other municipal areas. Regional open space includes areas of natural bush augmented with recreational and leisure facilities. Examples are Leven Canyon, Dial Range, Bass Strait foreshores and increasingly, there is a 'cross-over' between District and Regional areas of open space. Examples of 'cross-over' space include North West coastal walkways and cycleways, Dial Park playground and Fairway Park that all offer a range of recreational pursuits that attract the local community and users from beyond the municipal area.

The *LGBMP* Act, together with the Central Coast Open Space and Recreation Plan 2012–2022 and the Central Coast Open Space and Parks (including Playgrounds) Asset Management Plan 2015 enables the Council to: –

- . Require a subdivider of land to provide to the Council up to 5% of the land being subdivided at no cost to the Council;
- . Require public open space in excess of the 5% contribution as part of any subdivision proposal, subject to appropriate compensation to the subdivider;
- . Require the subdivider to make a contribution of cash-in-lieu of the provision of land where a land contribution is not desired.
- . Refuse a plan of subdivision where it considers that it should be altered to include public open space and where it requires consideration of littoral and riparian reserves; and
- . Hold in trust monies collected as cash-in-lieu contributions for public open space acquisition and improvement.

ELEMENTS OF THE POLICY

1 PRINCIPLES

The principles that guide the implementation of this Policy include:

- . irrespective of zoning, any subdivision of residential land will, or is likely to, increase the demand for provision of public open space due to an increase in population density;
- . the subdivision of residential land will be assessed under this Policy in respect to the demand for an area of public open space and/or a cash-in-lieu contribution;
- . in considering the provision of land or a cash-in-lieu contribution for public open space, any requirement to make such contribution should only occur where the subdivision will result in an increase in residential density (i.e. additional lots);

- . the community's public open space needs may be realised through a number of means and may be based on the recreational use categories adopted in the Central Coast Open Space and Recreation Plan 2012–2022.
- . the provision of public open space needs to be considered in the context of local, district and regional recreational needs;
- . the provision of public open space needs to consider the communities changing awareness, expectation and aspiration with regard to the location and use of public open space areas;
- . where a land contribution is preferred by the Council, developers must ensure that applications reflect the Council's needs and minimum criteria as set out in the Central Coast Open Space and Recreation Plan 2012–2022; and
- . where sufficient or maximum public open space already exists in an area, a cash-in-lieu contribution is likely to be required to provide for the provision or improvement of public open space of local, district or regional value.

2 APPLICATION OF THE POLICY

1 General

For the subdivision of land in Central Coast:

- (a) The Council may take a public open space contribution for all residential subdivision where additional lots are created.
- (b) The taking of cash-in-lieu is likely to be the Council's preferred option for public open space provision, unless the site's locality is identified in the Central Coast Open Space and Recreation Plan 2012–2022 as being a locality that is inadequately serviced in the provision of public open space.
- (c) Public open space provision will only be taken in land where:
 - (i) the Council identifies that there is a deficiency of public open space in the locality of the land being subdivided;
 - (ii) part of the land is suitable for public open space in terms of useable shape and area, topography, accessibility and safety for the public;
 - (iii) there is a need to provide access to an area of public open space that is effectively 'land-locked';
 - (iv) there is a need to provide linkages with other open spaces and/or contribute to recreational trails; or
 - (v) it is required to preserve significant remnant natural habitat.

- (d) The Council will not require a contribution where a boundary adjustment or a realignment of boundaries is involved, resulting in no additional lots being created.
- (e) For subdivision of less than five (5) lots, the Land Use Planning Group is to undertake an assessment of the existing provision of public open space in the vicinity of the subdivision, in accordance with the Central Coast Open Space and Recreation Plan 2012–2022.
- (f) For all residential subdivisions greater than five (5) lots, the Assets and Facilities Group Leader must be consulted for advice in respect to the public open space assessment.

2 Land Contribution

- (a) Where it is determined that a land contribution is required, the Council will require the developer to provide with no coast to Council; and area of suitable land area equivalent to 5% of the value of the land being subdivided.
- (b) The Council may take less than the permitted 5% if a lesser area of land complies with the Central Coast Open Space and Recreation Plan 2012–2022.
- (c) The Council may require a greater contribution of land than the 5%. In such cases, the additional land will be subject to purchase by the Council. The value of the land to be determined by an independent valuer.
- (d) Following the public open space assessment, the Land Use Planning Group Leader may determine that the layout of the subdivision plan should be altered to either include or omit an area of public open space. If the applicant declines to accept such provision of Open Space, the permit application may be recommended to the Council in its determination on the permit for refusal under Section 85 of the Act.

3 Cash-in-lieu Contribution and Methodology

- (a) If the Land Use Planning Group Leader assessment determines that there is sufficient public open space provided in the locality of the development and land is not required to:
 - (i) provide linkages with other open spaces and/or contribute to recreational trails;
 - (ii) preserve significant remnant local habitat; or
 - (iii) contribute to an identified district or regional open space need,

then a **cash-in-lieu contribution** may be recommended to the Council in its determination – to be made by the developer.

The value of the contribution will be determined in accordance with the methodology stated under 3(b) below, as follows:

- (iv) in the General Residential, Low Density Residential, Village zones – 5% of the unimproved value of all additional lots created; and
 - (v) in the Rural Living and Landscape Conservation zones – 3% of the value of all additional lots created.
- (b) The **methodology** to be employed in determining a Public Open Space contribution will be:
- (i) a cash-in-lieu contribution for subdivision of 5 lots or less be based on the current land valuation as determined by the Valuer General;
 - (ii) a cash-in-lieu contribution for subdivision great than 5 lots to be determined by a register land valuer.
 - (iii) a maximum contribution of \$3,000 per lot be applied to any additional lots.

UTILISATION OF PUBLIC OPEN SPACE CONTRUBUTION FUNDS

- 1 The Council’s Director Organisational Services must ensure that monies collected by the Council as public open space contributions are accounted for separately to general Council rate revenue and in a Public Open Space Reserve (the POS Reserve).
- 2 POS Reserve funds are to be expended every three years or less for new or improvement works relating to public open space, as opposed to ongoing maintenance of open space or the funding of non-open-space infrastructure.
- 3 When making a recommendation to the Council concerning the expenditure of POS Reserve funds, the Council’s Director Infrastructure Services is to follow these guidelines:
 - (a) expenditure must meet the community’s future recreational and open space needs;
 - (b) the distribution of public open space facilities must occur on an equitable basis across the broader community irrespective of where funds are collected;

Public Open Space Contributions Policy

- (c) any new public open space areas or facilities which are established must:
 - (i) reflect the community's aspirations and expectations;
 - (ii) have the capacity to support a diversity of passive and active recreational activities;
 - (iii) allow for the safety and security for users and adjoining residents; and
 - (iv) be appropriately suited (size, shape, gradient and location) for the intended use.
- 4 The Council's Service and Asset Management Plan identifies the estimated capital renewal expenditure required to provide an agreed level of service to the community over a twenty (20) year period. This Plan must be taken into account when making public open space fund expenditure decisions.

RESPONSIBILITIES

The Land Use Planning Group Leader or Land Use Planning Officers are responsible for undertaking assessments of development applications for the subdivision of land and report to the Council on same as part of any application for a permit. Where a subdivision proposal involves more than five (5) lots, the Assets and Facilities Group Leader is to provide advice on the public open space assessment of an application.

The Director Organisational Services is responsible for administration of the accumulated POS Reserve.

The Director Infrastructure Services is responsible for making recommendations to the Council concerning the use of accumulated POS Reserve.

REVIEW

This Policy will be reviewed every three years unless organisational and legislative changes require more frequent modifications.

Sandra Ayton
GENERAL MANAGER
29 January 2019