

SECURING PUBLIC OPEN SPACE PROVISION THROUGH SUBDIVISION

PURPOSE

This policy provides a framework for Council to determine public open space requirements when land is subdivided.

SCOPE

This policy applies to all applications for the subdivision of land within the municipality.

STRATEGIC PLAN ALIGNMENT

Making Lives Better

Objective 1.3 Facilitate and/or deliver services to our communities.

Strategy 1.3.1 Directly deliver defined service levels to our communities.

Valuing Our Environment

Objective 3.1 Create a liveable and desirable City.

Strategy 3.1.4. Deliver new and existing services to improve the City's liveability.

Objective 3.2 Manage our natural environments now and for the future.

Strategy 3.2.1 Identify and protect areas of high natural values.

Strategy 3.2.3 Enhance, protect, and celebrate the Derwent Foreshore.

Leading Our Community

Objective 4.1 Govern in the best interests of our community.

Strategy 4.1.2 Manage the City's assets soundly for the long-term benefit of the Community.

Objective 4.2 Prioritise resources to achieve our communities' goals.

Strategy 4.2.1 Deploy the Council's resources effectively to deliver value.

STATUTORY REQUIREMENTS

| | |
|---|---|
| Acts | <i>Land Use Planning and Approvals Act 1993</i> <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> |
| Regulations | N/A |
| Australian/International Standards | N/A |

DEFINITIONS

Cash in Lieu of Public Open Space means payment of an amount equal to five per cent of the improved value of the land being subdivided, not including the balance lot, as at the date of the lodgement of the final plan under s.117(2) of the *Local Government (Building and Miscellaneous Provisions) Act 1993*. [Consistent with: *N Leary v Clarence City Council*[2013] TAS RMPAT 68 (24 May 2013)]

Final Plan means a final plan submitted to Council under the *Local Government (Building and Miscellaneous Provisions) Act 1993* in relation to the subdivision of land for which a permit has been granted under the *Land Use Planning and Approvals Act 1993*.

Littoral and Riparian Reserve means an area with natural values that is up to 30 metres from the shore of the sea or the bank of a river, rivulet or lake.

Open Space Reserve Account means a separate reserve bank account into which any cash provided in lieu of public open space is paid.

Public Open Space Contribution means a contribution of five percent of the subdivision land area.

Plan of Subdivision means a plan submitted to Council for the purpose of a permit under the *Land Use Planning and Approvals Act 1993* in relation to subdivision of land.

Policy means this policy.

Public Open Space means land used for public recreation or public gardens or for similar purposes.

Subdivision means –

- (a) the act of subdividing; or
- (b) the block of land subject to an act of subdividing.

POLICY STATEMENT

1. Council's Responsibilities

This policy provides the framework for Council to:

- (a) Fulfil the requirements of relevant policies, strategies and Acts in relation to securing land for public open space, littoral reserves or riparian reserves when land is subdivided.

- (b) Provide developers and their consultants with clarity on whether land is likely to be required to be provided for public open space, littoral reserves and riparian reserves when preparing a Plan of subdivision.
- (c) Facilitate discussion about the provision of land for public open space, littoral reserves and riparian reserves under Section 85 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* early in the process of a proponent preparing an application for a planning permit for subdivision.
- (d) Integrate the decision whether to require land for public open space, littoral reserves and riparian reserves or the payment of a contribution of cash in lieu of public open space into the granting of a planning permit under the *Land Use Planning and Approvals Act 1993*.

2. Objectives

The objectives of this policy are as follows:

- (a) To ensure that public open space is provided where it provides maximum benefit for the community and having regard to the cost of its ongoing maintenance.
- (b) To ensure that the arrangement of ways and public open space provides for all the following:
 - i) the provision of safe, convenient and efficient connections to assist accessibility and mobility of the community; and
 - ii) the adequate accommodation of pedestrian and cycling traffic.
- (c) To ensure that land with natural values is secured as littoral reserves and riparian reserves where this results in the best long-term management of those values.
- (d) To ensure decisions about public open space provision are made as part of the assessment of an application to subdivide land.

3. Determining whether public open space is required

Guiding Principles

- (a) All subdivisions creating new lots will contribute to an increased demand for public open space, however some subdivisions because of their location and/or purpose will not increase demand significantly.
- (b) Subdivisions involving the creation of new urban residential neighbourhoods may include the provision of public open space which:
 - i) is within convenient walking distances for residents;
 - ii) is useable for recreation purposes;
 - iii) provides permeability in the form of pedestrian linkages;
 - iv) is safe and easily maintained;
 - v) caters for diversity of recreational experiences across the neighbourhood area; and

- vi) protects areas of natural and cultural value.
- (c) Where public open space is not proposed; is proposed but is less than five per cent of the subdivision area; or what is proposed is not desired by Council, then a cash in lieu contribution will be required.
- (d) Every subdivision should be assessed on its merits and according to this policy as to the requirement for an area of public open space and/or a cash in lieu contribution. Departure from the policy may be appropriate in certain circumstances.

Public open space requirements

- (a) The provision of public open space or a contribution of cash in lieu will be required for all subdivision of land in all zones other than the Agriculture, Future Urban, Rural or Utilities zones, that results in increased demand or utilisation of public open space. It is generally anticipated that all subdivisions in other than the Agriculture, Future Urban, Rural or Utilities zones that result in the creation of new lots will increase the use or demand for public open space.
- (b) Public open space may be required if it is considered necessary to protect and/or provide public access to a significant natural or historic feature, or to preserve important habitat.
- (c) Areas proposed to be set aside for public open space will be assessed in terms of:
 - i) whether they are conveniently located for use by surrounding residents;
 - ii) whether they are of a size, shape and gradient suited to their proposed use;
 - iii) whether they allow for a reasonable level of safety and security for users and adjoining residents;
 - iv) whether they can be developed and maintained within Council's resources;
 - v) whether they complement existing open space facilities;
 - vi) their ability to support a diversity of recreational activities;
 - vii) protection of environmental and/or visual values; and
 - viii) potential connection to other open spaces and contribution to the recreational trails system throughout the municipality.

Cash in lieu contributions

- (a) A contribution of cash in lieu of open space will be required where:
 - i) the subdivision proposal does not include public open space that is determined by Council to be suitable for public open space, or what is proposed is not desired by Council;
 - ii) it is impracticable to provide public open space as part of the subdivision; or
 - iii) the public open space proposed in the subdivision is less than five percent of the subdivision area.

- (b) The amount of cash contribution will be determined by a valuation undertaken by a valuer who is agreed to by Council. The valuation will be based on the improved value of the land being subdivided, not including the balance lot, at the date of the lodgement of the final plan. The cost of the valuation will be borne by the subdivider.
- (c) Cash in lieu of open space must be paid prior to the sealing of the Final Plan of Subdivision.

Assessment and determination

- (a) All relevant Council departments will be involved in any pre-lodgement discussions about the subdivision of land where land for public open space, littoral reserves and riparian reserves may be able to be secured or a contribution of cash in lieu of open space may be required.
- (b) Where an application is received for subdivision, the applicant shall be advised that Council proposes to rely on the powers under Section 85 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* to require the provision of land for public open space or the payment of a contribution of cash in lieu of open space.
- (c) The determination whether land for public open space and/or a cash in lieu contributions will required will be made through consultation with all relevant Council departments and in accordance with the principles within this policy.
- (d) Council will negotiate with the applicant to secure land to the satisfaction of Council for public open space or a littoral reserve or a riparian reserve during the assessment of a Plan of Subdivision. Where agreement cannot be reached Council may exercise its powers under Section 85 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* to refuse to approve the Plan of Subdivision.
- (e) Consultation with the Crown may occur where it is proposed to secure land for a littoral reserve or a riparian reserve.

4. Configuration of land for public open space

- (a) The arrangement of ways and public open space within a subdivision should satisfy the following:
 - i) connections with any adjoining ways are provided through the provision of ways to the common boundary, as appropriate;
 - ii) connections with any neighbouring land with subdivision potential is provided through the provision of ways to the common boundary, as appropriate;
 - iii) connections with the neighbourhood road network are provided through the provision of ways to those roads, as appropriate;
 - iv) convenient access to local shops, community facilities, public open space and public transport routes is provided, as appropriate;

- v) new ways are designed so that adequate passive surveillance will be provided from development on neighbouring land and public roads as appropriate;
- vi) provides for a legible movement network;
- vii) the route of new ways has regard to any pedestrian and cycleway, or public open space plan adopted by Council;
- viii) new ways or extensions to existing ways must be designed to minimise opportunities for entrapment or other criminal behaviour including, but not limited to, having regard to the following:
 - a. the width of the way.
 - b. the length of the way.
 - c. landscaping within the way.
 - d. lighting.
 - e. provision of opportunities for 'loitering';
 - f. the shape of the way (avoiding bends, corners or other opportunities for concealment).

5. Configuration of land for littoral reserves and riparian reserves

Land provided within a subdivision for littoral reserves and riparian reserves should satisfy the following:

- (a) the configuration of the reserve shall maximise the protection of the natural values of the land;
- (b) connections with any adjoining ways are provided through the provision of ways to the common boundary, as appropriate;
- (c) connections with any neighbouring land with subdivision potential is provided through the provision of ways to the common boundary, as appropriate;
- (d) connections with the neighbourhood road network are provided through the provision of ways to those roads, as appropriate;
- (e) new ways are designed so that adequate passive surveillance will be provided from development on neighbouring land and public roads as appropriate;
- (f) provides for a legible movement network;
- (g) topographical and other physical conditions of the site are appropriately accommodated in the design; and
- (h) the route of new ways has regard to any pedestrian and cycleway, or public open space plan adopted by Council.

6. Standard of land at the time of transfer of ownership

Land provided within a subdivision for public open space, a littoral reserve or a riparian reserve must satisfy all the following at the time of the transfer of ownership:

- (a) the land must be treated for all weeds to the satisfaction of the Manager Property, Environment and Waste (or equivalent);
- (b) all rubbish and artifacts resulting from the previous use of the land must be removed;
- (c) where works to create the subdivision result in an alteration of the natural surface of the land and/or interference with native vegetation:
 - i) a landscaping plan must be prepared and submitted for the approval of the Manager Property, Environment and Waste (or equivalent); and
 - ii) all works set out in the approved landscaping plan must be completed to the satisfaction of the Manager Property, Environment and Waste prior to approval of the Final Plan for the subdivision.

7. Establishment and maintenance of Open Space Reserve Account

Council will establish and maintain a separate Open Space Reserve bank account into which any cash provided in lieu of public open space as a result of Council's planning processes will be paid.

8. Expenditure from Open Space Reserve Account

- (a) Expenditure from the Open Space Reserve Account:
 - i) must be in line with Council's approved budget (operational and capital);
 - ii) must be in line with a joint recommendation from the Planning, Property and Environment sections of Council and endorsed by the Chief Financial Officer; and
 - iii) may only be used for the acquisition or improvement of land for public open space as per the requirements of the Local Government (Building and Miscellaneous Provisions) Act 1993.
- (b) Any expenditure outside of budget allocations must be approved by Council (as required by s.82 of the Local Government Act 1993).

9. Funds Held in the Open Space Reserve Account

- (a) Funds in the Open Space Reserve Account are the responsibility of the Manager Property, Environment and Waste (or equivalent) or their nominated delegate and are reviewed in the monthly forecasting process.
- (b) Reconciliation of funds in the Open Space Reserve Account must be provided to the Chief Financial Officer or their nominated delegate and must be paid prior to the sealing of the Final Plan of Subdivision.

BACKGROUND

The Tasmanian Planning Scheme - Glenorchy (TPSG) does not contain provisions requiring the assessment of whether an area of public open space should be provided when land is subdivided, and if so where and in what configuration, when a Plan of Subdivision is being assessed.

The former Glenorchy Interim Planning Schemes 2015 included provisions in Part D Zones, which were used in conjunction with Council's *Subdivisions - Public Open Space Acquisitions and Contributions Policy* to determine whether an area of public open space should be provided when a Plan of Subdivision was being assessed.

Section 85 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* however provides that Council may refuse to approve a Plan of Subdivision if it is of the opinion that the layout of the subdivision should be altered to include or omit public open space or littoral or riparian reserves.

The purpose of this Policy is to provide guidance for the exercise of the power under Section 85 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* and to ensure the requirement to provide land for public open space is addressed as early as possible in the process of securing a planning permit for subdivision.

DOCUMENT CONTROL

| | | | |
|--------------------------------|---|---------------------------|---------------------|
| Version: | 1.0 | Commencement Date: | 30 Aug 2022 |
| Minutes Reference | Council meeting, Mon 29 Aug 2022, Item 07 | | |
| Previous Versions: | This Policy rescinds the 'Subdivisions – Public Open Space Acquisitions and Contributions Policy' and the 'Public Open Space Reserve and Expenditure Policy'. | | |
| Responsible Directorate | Infrastructure and Works | Controller: | Manager Development |
| ECM Document No.: | 3157973 | | |