

Public Open Space Contribution Policy

GOV-DEV 001

Authority and Other Information	
Date of approval	28 September 2016
Source of approval	Resolution No. 15.041/16
Date of commencement	28 September 2016
Source of authority	<i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> <i>Land Use Planning and Approvals Act 1993</i> <i>Huon Valley Interim Planning Scheme 2015</i>
Legislative Reference	<i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> <i>Land Use Planning and Approvals Act 1993</i> <i>Huon Valley Interim Planning Scheme 2015</i>
Delegations	Delegation Nos. 2(xix), 2(xx), 13(9), 13(10), 13(12), 13(15) & 13(16)
Strategic Plan Reference	1F
Date of review	At least once every four years but not later than September 2020 or as required as a result of any legislative change
Previous policies withdrawn or amended	Council Resolution No. 13.007/95 dated 13 March 1995
Department responsible for implementation	Regulatory and Development Services
Department responsible for policy	Regulatory and Development Services
Publication of policy	A copy of the Policy be placed on Council's website and copies be made available for inspection at and free of charge from Council's Customer Service Centre.

1. Purpose and Background:

1.1 Background

The municipal area develops partly as a result of subdivision of land for creation of new lots.

Legislation establishes that when processing applications for subdivision of land within the municipal area the Council is required to consider the allocation of land towards public open space or a contribution for cash in lieu thereof.

The provisions for public open space is in accordance with the requirements of the *Local Government (Building and Miscellaneous Provisions) Act 1993* (LOGBUMP) as well as any particular or specific provisions contained in the *Land Use Planning and Approvals Act 1993* (LUPPA) and the Planning Scheme.

LOGBUMP defines public open space as meaning space for public recreation or public gardens or for similar purposes.

Council may refuse to approval a plan of subdivision if it is of the opinion that the layout should be altered to include or omit public open space.

The Council may require an owner to increase the area of public open space so that the value of the total area approved in the final plan exceeds the value of the area provided for open space in the plan of subdivision.

The Council may refuse failed to approve a plan of subdivision on a ground that the layout should be altered to include or omit public open space. The Council may though subsequently approve a fresh plan in which the total area of land reserved for public open space exceeds the value of all such land in the original plan and the value of the area reserved for open space in the plan also exceeds the value of five per cent of the whole area comprised in a plan of subdivision.

Where the Council requires land greater than 5 per cent of the subdivision area the Council must purchase the excess. The purchase price only applies to that amount over five per cent of the land area and is to be valued at the date of lodgement of the plan of subdivision.

When considering public open space in the area taken this is also to include any littoral or riparian reserves.

Instead of requiring an owner to provide or increase the area of Public Open Space the Council may, before approving a plan of subdivision, require a Cash in Lieu of Public Open Space contribution.

Section 117(5) provides that the Council is to receive cash in lieu contributions on trust for the acquisition and improvement of land for public open space for the benefit of inhabitants of the municipal area.

As set out in the case of *N Leary v Clarence City Council [2013] TAS RMPAT 68 (24 May 2013)* the allocation of public open space is beneficial for the community. The purpose of Section 117 of the Act is to secure funds against the prospective acquisition or improvement of land for public open space in the municipal area in circumstances where Council chooses not to require the owner to increase public open space within the subdivision area.

1.2 Purpose

The purpose of this Policy is to:

- (a) Ensure that the provisions of LOGBUMP are appropriately implemented with respect to public open space being provided as part of the land subdivision process.
- (b) Ensure that land developers contribute to the provision of public open space commensurate with the scale of development.
- (c) Establish guidelines for the Council in determining the appropriateness of requiring a public open space contribution of land set aside in a plan of subdivision.
- (d) Establish parameters for determining whether a contribution should be taken as cash in lieu payment.

2. Definitions:

In this Policy:

“Cash in Lieu of Public Open Space” means security for payment of an amount of five per cent of the whole area comprised in the plan of subdivision less any area provided for public open space in the final plan and any area created by the final plan or the littoral or riparian in reserves.

“LOGBUMP” means the *Local Government (Building and Miscellaneous Provisions) Act 1993*

“LUPAA” means *Land Use Planning and Approvals Act 1993*

“Planning Scheme” means the *Huon Valley Interim Planning Scheme 2015* and any replacement made thereof under LUPAA including the *Tasmanian Planning Scheme* which applies at the date of the relevant application

“Public Open Space” means space for public recreation or public gardens or for similar purposes

3. Policy Statement:

In determining the public open space requirements for every application for subdivision the following matters will be for consideration:

3.1 The need for Public Open Space will be assessed on its merits and a contribution will be required by way of either:

- (a) Five per cent of the area of the land being subdivided into new lots to be as a Public Open Space lot; or
- (b) In addition to (a) such further area as may be required for purchase by the Council for establishment of greater public open space; or
- (c) A Cash in-lieu Contribution that is equivalent to the value of part or all of the land being subdivided into new lots; or
- (d) An allocation of land and a Cash in Lieu of Public Open Space contribution to the equivalent of five per cent of the land being subdivided into new lots.

3.2 Land for Public Open Space or a Cash in lieu of Public Open Space contribution will be taken on every application for subdivision of land in the following Zones:

- General Residential
- Low Density Residential
- Rural Living
- Village
- Community Purpose
- Recreation

- Local Business
- General Business
- Commercial

3.3 Public Open Space will not be taken for subdivision of other Zones unless the Council has a specific strategy or purpose relevant to that land at the date of the application.

3.4 A boundary adjustment or a boundary reorganisation proposal, where no additional lots are created, will not require an allocation for a Public Open Space lot or lots or a five per cent Cash in Lieu of Public Open Space contribution.

3.5 Where a subdivision is submitted in the form of a staged development, the Cash in-lieu of Public Open Space contributions can be paid proportionally.

3.6 Where it is not appropriate that land be provided for Public Open Space within the proposed subdivision then a Cash in Lieu of Public Open Space Contribution is to be taken on the following basis:

- The cash contribution is to be based on the newly greater additional lots, regardless of the zoning and all previous subdivisions;
- The calculation of the five per cent cash contribution is to be based on the value of the additional lot or lots created and not the balance lot;
- Consistent with Section 117 of LOGBUMP and *N Leary v Clarence City Council [2013] TAS RMPAT 68 (24 May 2013)* the Council will require any contribution to be five cent of the improved valuer as at the date of the lodgement of the final plan; and
- The lots created from a further subdivision of the subdivided lots and balance are required to also provide public open space contributions.

3.7 The amount of the Cash in Lieu of Public Open Space Contribution shall be determined by either:

- A valuation from a qualified valuer within the meaning of the *Land Valuers Act 2001* as obtained by the subdivider; or
- The General Manager accepting a contribution calculated on the basis of the most recent government valuation. This is to be adjusted for inflation over time using the Valuer General's adjustment factor and any other mitigating factors deemed appropriate.

3.8 Where the Council identifies that it wishes to take land as a Public Open Space lot. The Council will not in any way be bound by proposals for allocation of Public Open Space in plans of subdivision lodged with the Council simply at the preference of the subdivider.

When considering the taking of land the following is relevant:

- The taking of land for Public Open Space is identified in a relevant Strategy or there is an identified deficiency of Public Open Space in the vicinity of the land being subdivided and part of the land is suitable for Public Open Space in terms of useable shape and area, topography, other physical characteristics and accessibility and safety for the public.
- The taking of land as Public Open Space will facilitate the conservation of a significant natural or cultural heritage of the land for the benefit of the community.
- Part of the land will facilitate linkages between public lands as part of an open space network.

- (d) Apart from provision for littoral and riparian reserves as provided for in LOGBUMP, land set aside as a stormwater retention basin will not be deemed as satisfying a Public Open Space requirement unless the land also exhibits adequate value to the public in accordance with the above specifications.

3.10 All money received by way of Cash in Lieu of Public Open Space Contribution shall be reserved by Council in a separate account applied in accordance with Section 117(5) of LOGBUMP.

4. Application:

This Policy applies to all applications to subdivide land in the municipal area.

This Policy does not apply to the Council for any subdivision of Council land other than for any development undertaken for residential purposes.

5. Procedures:

This Policy will be applied in accordance with all procedures associated with dealing with subdivision applications to meet the requirements of LOGBUMP, LUPAA and the Planning Scheme.