

POLICY NO AM02 PUBLIC OPEN SPACE POLICY

DEPARTMENT:	Development Services
RESPONSIBLE OFFICER:	Manager Development Services
LINK TO STRATEGIC PLAN:	Ensure the efficient and effective provision of appropriate community assets
STATUTORY AUTHORITY:	Local Government (Building and Miscellaneous Provisions) Act 1993 Break O' Day Planning Scheme
OBJECTIVE:	This policy is to ensure a clear and consistent approach to land contributions for public open space and the calculation of contributions and the expenditure of funds secured in lieu of the provision of public open space associated with the subdivision of land within the Break O' Day Municipality
POLICY INFORMATION:	Adopted 19 March 2012 – Minute No 03/12.15.4.069 Amended 15 December 2014 – Minute No 12/14.14.5.357 Amended 15 April 2019 – Minute No 19/15.4.90 Amended 21 February 2022 – Minute No 02/22.16.3.3549449 Amended 16 October 2023 - Minute No 10/23.15.2.242

POLICY

1. INTRODUCTION

The purpose of this policy is to:

- Facilitate a strategic approach to the development of a contemporary and well-planned open space network.
- Clarify the process of determining whether a land or cash in lieu contribution is required as part of a subdivision development.
- Provide criteria for determining suitability of land contributions for public open space.
- Provide guidance on how public open space contributions are to be paid.
- Provide guidance on how funds obtained through cash in lieu contributions will be utilised.

Notwithstanding the intent of this policy the provisions of the Act and Planning Scheme are the guiding factors in respect to item 1.

2. PROCESS FOR DETERMINING LAND OR CASH IN LIEU CONTRIBUTION

Council will require a public open space contribution of either cash in lieu or land, equal to five percent of the unimproved value of the land not including the balance lot, or five percent of the subdivision land area, for subdivisions that could result in an increase in demand for public open space.

- This is a re requirement under the Local Government (Building and Miscellaneous Provisions) Act 1993.
- This requirement applies to the General Residential, Low Density Residential and Village Zones under the Break O' Day Interim Planning Scheme 2013.
- This requirement does not apply to strata developments, boundary adjustments where no new lots are created or subdivision for the development of public utilities.

In order to ensure an appropriate distribution of public open space, land contributions will be sought where one or more of the following apply:

- There is a gap in public open space provision where residences have no public open space within 300m safe walking distance.
- Acquisition of the land would further the objectives of any adopted Council's public open space objectives, or in order to meet any public open space or recreational needs.

In other cases, cash in lieu is the preferred public open space contribution.

- At Council's discretion, a cash contribution may be accepted in lieu of all or part of the land requirement.
- The applicant must obtain a current (not less than one month old) valuation, by a registered land valuer, of the subject land, less one of the proposed lots. The cash in lieu contribution shall total 5% of that value.
- The amount sought is to be included as a condition of the permit, thereby allowing any disagreement to be resolved at the initial stage of the process.

3. CRITERIA FOR DETERMINING LAND SUITABILITY AS PUBLIC OPEN SPACE

Where land contributions are required, proposed land must demonstrate compliance with the *Criteria for Land Contributions for Public Open Space*. The criteria will guide Council's assessment of proposed land contributions for public open space to ensure lands received are suitable. It will be at Council's discretion as to whether land offered is accepted and adequately meets the criteria for the intended purpose.

A developer may seek to offer land that is unviable to develop. In most instances, the characteristics that make land unviable to develop will also make that land unsuitable for public use and unsustainable to manage. It is essential that land is not accepted as open space that Council cannot manage in the future and/or does not provide any benefit to the community. Land used for the following purposes is not to be transferred to Council for public open space;

- Stormwater drainage swales and natural water courses that would otherwise form part of the drainage within the subdivision
- Above or below ground infrastructure that would limit the use of the land or landscaping treatments, and
- Pedestrian footways or other kinds of ways dedicated under section 95 of the Act.

4. PAYMENT OF PUBLIC OPEN SPACE CONTRIBUTIONS

The payment of contributions whether land or cash in lieu are to be made prior to the sealing of the Final Plan of Subdivision or in a staged subdivision as part of the first stage.

- Any land contribution to be transferred to Council must include land transfer documentation with the Final Plan of Subdivision (Council will not seal the plan without these documents). This requirement is also to be a condition of the Planning Permit.

5. ALLOCATION OF FUNDS FROM CASH IN LIEU CONTRIBUTIONS

As cash in lieu contributions are received instead of the provision of public open space, contributions received by Council will be set aside for that specific use. All funds received will be set aside in a reserve account for the purpose of improving the open space network.

- The expenditure of funds will be in accordance with any adopted Council open space strategy or plan, or in order to meet any local public open space or recreational needs.
- The funds will be used for strategic land acquisition of public open space or capital improvement of public open space facilities rather than for maintenance of existing infrastructure.

6. MONITORING AND REVIEW

This policy is to be reviewed initially in February 2024 and thereafter, every four years or earlier in the event of major changes to legislation or related policies, procedures or if deemed necessary by the General Manager

7. DEFINITIONS

Council	refers to the Break O Day Council.
Lot	means a block of land created by subdivision of a larger block of which it was part.
Public Open Space	means space for public recreation or public gardens or for similar purposes.
Subdivide	means to divide the surface of a block of land by creating estates or interests giving separate rights of occupation otherwise than by – <ul style="list-style-type: none"> a) a lease of a building or of the land belonging to and contiguous to a building between the occupiers of that building; or b) a lease of air space around or above a building; or c) a lease of a term not exceeding 10 years or for a term not capable of exceeding 10 years; or d) the creation of a lot on a strata scheme or a staged development scheme under the Strata Titles Act 1998 ; or e) an order adhering existing parcels of land.
Subdivision	means the act of subdividing or the lot subject to an act of subdividing.
Suitably Qualified Person	means a person who can adequately demonstrate relevant tertiary qualifications (or equivalent) and experience in a recognised field of knowledge, expertise or practice with direct relevance to the matter under consideration.

8. RELATED POLICIES AND LEGISLATION

This policy relates to and depends on other Council policies, as well as legislation, including:

- Local Government (Building and Miscellaneous Provisions) Act 1993
- Land Use Planning and Approvals Act 1993
- Tasmanian Open Space Policy and Planning Framework
- Break O Day Interim Planning Scheme 2013
- Break O Day Recreation and Open Space and Strategy 2014

9. ATTACHMENTS

Criteria for Land Contributions for Public Open Space.

Criteria for Land Contributions for Public Open Space

The following criteria will guide Council's assessment of proposed land contributions for public open space to ensure lands received are suitable for the intended purpose. It will be at Council's discretion as to whether land offered adequately meets the criteria and is accepted.

Criteria	Description
Accessibility	Physical access into the site including the inherent topography, at ground level and capable of supporting large mature canopy trees and the ability to make the site safe and accessible to people with limited mobility or with a disability.
Adjoining land use	The influence of adjoining land use on the recreational, ecological, social and cultural value of the open space. This includes consideration of existing and future planned land use and associated noise, built form and height.
Amenity	Visual and passive amenity values relates to the influence open space has on the liveability of neighbourhoods.
Condition	The existing physical condition of the land is to be suitable for use as public open space including that there are no inherent issues such as contamination and significant financial or safety implications for Council if the land becomes public open space.
Ecological	Includes the site's existing biodiversity values and the potential to contribute to the protection and enhancement of these values along with a site's contribution to existing or future ecological diversity and climate change adaptation.
Equity	The community including residents and visitors should have reasonable access to public open space.
Financial	The costs to Council in obtaining and improving the land as open space, along with the costs associated with the ongoing maintenance and management of it.
Frontage	Minimum street frontage of 15m.
Heritage character	Indigenous and non-Indigenous cultural heritage and historical values that could be enhanced and protected in the open space. These values will influence the future use and design and management of the open space.

Landscape character	Its contribution to the character and attractiveness of the neighbourhood.
Location/linkages	The site's contribution to neighbourhood walkability including open space corridor links.
Ongoing maintenance and management	The ability for Council to effectively maintain and manage the land as open space, including weed management.
Recreation	The potential for the site to accommodate a range of organised, unstructured and informal recreational uses based on community needs. These can include field sports, play, walking, jogging, cycling, exercising, informal ball games, socialising, picnicking, sitting and dog walking.
Services/easements	Extent of other services and easements that would affect the development and use of the land as open space including roadways, overhead structures, water supply, power supply, flood mitigation and drainage.
Size	The minimum size for the site to meet its intended purpose.
Transport	The range of transport options for residents to easily access the site including proximity to public transport, linear shared trails, major roads and the street network, relevant to the size and anticipated catchment for the proposed open space.
Visibility	The site's visual prominence to maximise its use and contribution to the broader community. Generally, land is preferred which has at least two access points and local roads to at least two sides and is provided at natural surface level.