



Public Open Space Policy (2013)

Amended 2 December 2019

1. Abbreviations

CPTED	Crime Prevention Through Environmental Design
PD1	The Tasmanian Planning Commission’s Planning Directive No.1 - The Format and Structure of Planning Schemes
LGBMP	Local Government (Buildings and Miscellaneous Provisions) Act 1993
POS	Public Open Space
OVG	Office of the Valuer General

2. Policy Basis

Clarence wishes to establish an open space network that provides for a range of active and passive recreation opportunities that is accessible, fit for purpose, enhances the natural and cultural resources of the City, and offers an amenable environment for all forms of active and passive recreation.

This policy gives recognition of the Council's powers and obligations in respect to Public Open Space (POS) under the provisions of the Local Government (Buildings and Miscellaneous Provisions) Act 1993 (LGBMP). These provisions enable the Council to:

- 2.1. require a subdivider to provide to Council up to 5% of the land being subdivided as POS; or
- 2.2. require POS in excess of the 5% contribution as a part of any subdivision proposal subject to appropriate compensation; or
- 2.3. condition a subdivider to provide up to 5% cash in lieu contribution of the value of the land being subdivided (less any area provided as POS); or
- 2.4. refuse a subdivision if it is of the opinion that the proposal should be altered to include (or omit) POS.

3. Objectives

- 3.1. To provide a consistent approach to the consideration of POS, or alternatively the payment of cash in lieu of it, as part of the subdivision process.
- 3.2. To provide a framework to assist Council’s assessment of POS in terms of supply, demand, location, accessibility and suitability.
- 3.3. To guide when to take a cash contribution in lieu of POS as part of the subdivision process.
- 3.4. To guide the acquisition of POS.
- 3.5. To guide the management of accumulated POS cash contributions.
- 3.6. To guide the nature and standard of improvements to POS required to be completed prior to transfer of the land to Council.
- 3.7. To assist agencies, community groups, clubs, developers and residents to understand Council's POS policy.

- 3.8. To articulate the basis and justification upon which the Council draws its requirement to take POS, or a cash contribution in lieu of it, in any and specific subdivision developments.
- 3.9. To provide the flexibility to accommodate unique circumstances that warrant alternative solutions in a manner that does not affect the integrity of the policy.

4. Scheme Development and Zoning

- 4.1. Isolated local parks, civic spaces and POS used primarily for permeability and connectivity are to be zoned consistently with the surrounding area.
- 4.2. Excluding any POS listed at 4.1 above, areas of existing POS and POS identified in any adopted Council Policy are to be zoned for this purpose. This would be either “Recreation” or “Open Space” under a scheme based on the PD1 template. I.e. POS that serves a subregional/significant role.
- 4.3. The Planning Scheme is to be developed/amended to include provisions consistent with this POS Policy.

5. Subdivision

To ensure the delivery of regional or city wide POS outcomes, every subdivision that results in an increased demand and/or utilisation of POS is to be assessed on its merits according to this policy.

In the circumstances where it is established that a subdivision will result in increased demand for POS, the requirement for an area of POS and/or cash contribution in lieu of it is to be based on the following principles:

- 5.1. With the exception of the subdivision of existing POS areas and subdivision for road and utility infrastructure, all subdivision of land (particularly but not limited to residential and rural residential type subdivision) are anticipated to potentially increase the demand for the provision of POS;
- 5.2. That sufficient POS land is to be secured through the subdivision process to provide social and passive recreational opportunities and facilitate multiuser connectively through residential, rural, industrial and business/commercial land.
- 5.3. At the local level, new areas of open space should continue to be provided in developing urban areas to serve the future population. In established areas, priority should be towards improving the connectivity to and between existing POS and improving the quality of related infrastructure.
- 5.4. Where a subdivision proposal does not provide POS land the applicant may alternatively be required to provide a cash contribution in lieu of it. A cash contribution will be required in circumstances where a subdivision is likely to contribute to an increase in population or an increase in the demand and/or utilisation of public open space.

- 5.5.** In areas where POS has been previously acquired or has been identified as being required in the future, land benefiting from that POS ought to contribute towards its acquisition and subsequent development.
- 5.6.** POS to be transferred to Council through the subdivision process is to be developed to an appropriate standard prior to transfer. In order to achieve this principle, applicable subdivision Permits may include conditions relating, but not limited to, landscaping, weed management, fencing, vehicular accesses and/or installation of vehicle barriers and construction of multiuser paths.
- 5.7.** Consideration for a reduction of POS land to less than 5% of the total area being subdivided may be supported when the POS to be transferred has been (or will be) developed with capital improvements such as but not limited to sports grounds, community buildings, boat ramps, jetties, toilets the installation of drinking fountains, seating and the like.
- 5.8.** Land to be provided to Council for the purposes a POS is to be transferred at the time of the sealing, or where the permit provides for staged development, as part of the first stage. Where this is not possible, based on access and infrastructure provision, the land is to be transferred as early as practicable. In this circumstance any subdivision approval will be conditioned to ensure that:
- a) the staging of the POS transfer is clearly indicated on the approved staging plan.
 - b) POS is transferred to Council in a timely manner commensurate with community need.
 - c) in the event that a subdivision commences but does not proceed to the stage of POS transfer, sufficient security for the future POS/POS provision may be sought by Council at a rate relative to the proportion of the lots approved for release on final plans for stages in that subdivision. Such security requirements:-
 - (i) must be in accordance with Council’s relevant policy for bonding;
 - (ii) are in recognition of the increased POS demand generated by the staged release of lots under that subdivision;
 - (iii) need to be sufficient to provide for and service any newly created lots sealed in a previous stage;
 - (iv) need to reflect the proportional value of the POS relative to the proportion of lots released at the time of sealing of each stage’s final plan; and
 - (v) may be drawn on by the Council if the POS land has not been transferred to Council, as if the security were a cash in lieu for POS in circumstances where the progress in development of the stages in a subdivision is abandoned (including the pursuit of an alternative subdivision plan for the relevant land) or is not actively pursued by the subdivider in a timely manner in order for the Council to satisfy the public demand for the use of the POS.

- d) Any POS security and transfer requirements may be further supported by a Part 5 agreement, the provisions for which sunset at the conclusion of all stages of the subdivision being satisfied.

5.9. Where new Development Plan Overlays or Specific Area Plans identify areas to be set aside for POS the plan should outline the nature of the works and/or facilities to be undertaken/developed on the land prior to transfer.

5.10. Conversion from a multiple tenanted use/strata development to a subdivision may warrant either POS land or alternatively a contribution in lieu of it. POS land may be required where desirable public access though the site may be facilitated. A cash contribution in lieu of POS may be appropriate when the contribution is required for the acquisition of POS or improvement of POS for the benefit of inhabitants of the municipal area.

5.11. Land used for the following purposes should not be transferred to Council as POS:

- a) stormwater drainage swales and natural water courses that would otherwise form part of the overall drainage within the subdivided area;
- b) above ground infrastructure such as utility stations;
- c) below ground infrastructure that would limit the use of the land above it and/or would limit landscaping treatments; and
- d) pedestrian access ways.

Where land is required for any of the above purposes, it should be provided to the relevant authority for the intended purpose and, subject to Council's discretion, either: additional land provided for POS, or alternatively a cash contribution provided in lieu of it.

When alternative areas of land is provided for POS on top of the land intended for the above purposes, the utilitarian function must be appropriately located and not inhibit the successful use and development of the POS.

5.12. Consultation with the Crown is necessary in circumstances when POS in the form of littoral and riparian reserves is proposed to be transferred to it.

6. *Assessment of POS*

6.1. The provision of POS needs to be considered in the context of neighbourhood, regional and city wide recreational needs and that land may be taken for the purposes of POS provided that:

6.1.1. it is specifically identified as being required in any adopted Council policy; or

6.1.2. securing the land would be consistent with one or more of the following general principles:

- a) it would further the objectives of any adopted Council policy;

- b) the land is convenient, accessible and fit for purpose (i.e. useable and not overly constrained by topography, shape or natural hazards);
- c) the land would provide or improve permeability through the site or surrounding area;
- d) the land would provide or improve connectivity to and between existing POS;
- e) the land would provide or improve connectivity to and between existing and prospective POS environments/requirements/plans;
- f) the land would enhance the general amenity and urban character of the area;
- g) securing the land would protect areas of locally significant natural or cultural value; and

6.1.3. the size, shape and location of the land within the context of its surrounds is consistent with established Crime Prevention Through Environmental Design (CPTED) principles; and

6.1.4. the land can be developed and maintained within Council's resources.

6.2. POS assessment will involve the following considerations:

- a) the existing provision of POS in the vicinity of the subject area;
- b) whether the land is conveniently located to service existing or future users;
- c) the extent and condition of existing vegetation/habitat;
- d) whether the land is fit for propose in terms of size, shape, topography, gradient, infrastructure, conservation covenants or other encumbrances;
- e) the extent to which the land contributes to Council's ability to support a diversity of recreational activities;
- f) the best location for POS in the wider area where the subdivision is located and the likelihood of alternative sites;
- g) the land's vulnerability to natural hazards; and
- h) anticipated service life/longevity due to sea level rise.

7. *Assessment for the Provision of Cash in Lieu of POS*

7.1. Subdivisions proposing suitable POS representing 5% (or greater) of the area of the land being subdivided will not be required to pay a POS cash contribution.

7.2. In recognising the objectives and principles of this policy, a cash contribution in lieu of POS (or part thereof) not exceeding 5% of the value of the area being subdivided may be required as part of any subdivision in the following circumstances:

- a) the subdivision proposal does not provide any POS; or
- b) less than 5% of the total area being subdivided is proposed as POS; or
- c) the proposed POS (or part thereof) is not acceptable to Council; or
- d) it is not desirable to secure POS from the subject land.

7.2.1. A cash contribution in lieu of POS will generally be required when the subdivision is within (or predominantly in) the following zones:

- a) Any of the residential zones; or
- b) The Rural Living Zone; or
- c) The Village Zone; or
- d) Any of the business zones.

7.2.2. Notwithstanding 7.2.1 above, a cash contribution in lieu of POS will generally be required in the remaining zones when:

- a) land within the estate/suburb has been zoned in the Planning Scheme as being required for POS; and/or
- b) land within the estate/suburb has been identified in any Council policy as being required for POS; and/or
- c) POS within the estate/suburb land has previously been acquired and compensation paid.

8. *POS Valuations and Payment of POS Contributions*

8.1. Although it is not explicitly stated in the LGBMP, the Resource Management and Appeals Tribunal has confirmed that valuations for the purposes of determination of POS cash in lieu contributions are required to be as at the date of lodgement of the final plan of subdivision.

It is policy that:

- a) Valuations are to be provided by a Clarence appointed valuer at the subdivider's cost.
- b) Upon the lodgement of the final plan for sealing Council will seek a valuation. On receipt of that valuation, the POS contribution required along with an amount equal to the valuation fee will be referred to the subdivider for payment.
- c) Payment of the POS contribution by the subdivider will be deemed agreement to valuer's assessment and the calculation of the POS contribution (unless the contrary is indicated) and the final plan of survey can proceed to be sealed.

- 8.2.** Subject to 8.4 cash contributions in lieu of POS (or security by way bond and bank guarantee) are to be paid prior to the sealing of the Final Plan of Subdivision.
- 8.3.** In the case of staged subdivisions, POS contributions are to be paid (or security by way bond and bank guarantee) collectively as one lump sum and be received prior to the sealing of the first stage. Alternatively, a separate valuation must be obtained for of each respective stage at the subdividers cost.
- 8.4.** In the event that the amount of contribution required by Council is disputed by the subdivider the final plan will not be sealed until either:
- a) the contribution (based on Council’s valuation) has been paid and the subdivider advises in writing prior to payment that they wish to dispute the valuation (refer to 8.5); or
 - b) the subdivider has entered into a security arrangement acceptable to Council for payment of the contribution. This security arrangement must be based on Council’s valuation and provide for:-
 - (i) security in the form of a bond acceptable to Council supported by an open dated bank guarantee from a recognised financial institution;
 - (ii) recognition of the subdividers objection to the amount of contribution;
 - (iii) a requirement on the subdivider to expedite their dispute by pursuing their objection in good faith and with no undue delay; and
 - (iv) recognising that Council will call in the security following the taking effect of the final plan by giving 90 days notice.
- 8.5.** Valuation dispute claims must be supported by a current valuation by a registered valuer which must include a detailed breakdown of the calculation upon which the valuation was arrived at. The subdivider must bear the cost of this valuation.
- 8.6.** Upon notification of a valuation dispute Council will:
- (i) request Council’s appointed valuer to review the independent valuation and request advice as to whether the initial valuation warrants amendment;
 - (ii) advise the subdivider whether there is any change in the original valuation and/or whether there is scope for negotiation;
 - (iii) always negotiate in respect to POS contributions consistent with the guidance of the Council’s appointed valuer’s assessment and advice;
- 8.7.** Where agreement as to the basis of valuation cannot be resolved between the opinions provided by the respective valuers, it is recognised that should the subdivider remain dissatisfied they will need to seek resolution of the dispute through the formal avenues available under the Land Acquisition Act 1993 as provided for under Section 117 (3) of LGBMP.

9. Administration of POS Contributions

- 9.1. Cash contributions received are to be invested in appropriate interest bearing deposits and the interest so earned will be rolled over into the POS fund.
- 9.2. Security held in lieu of POS will be called in following the taking effect of the final plan by giving 90 days notice.
- 9.3. In the event a valuation is disputed and the security has either been paid or called in the difference between the OVG valuation and the independent valuation provided by the subdivider will not be accounted for as part of the collective POS fund.

Following the resolution of the dispute:

- a) Any overpayment together with interest earned on that amount will be reimbursed to the subdivider; and
- b) Any remaining balance between the independent valuation and the final undisputed valuation will be administered as part of the collective POS fund.

10. Utilisation of POS contributions (land and capital improvement)

- 10.1. The use of accumulated POS funds will be directed in preference towards longer term, strategic land acquisitions and capital improvement of major facilities rather than capital improvement of current assets.
- 10.2. Accumulated POS funds will not be utilised for maintenance of existing assets/infrastructure.
- 10.3. Land to be acquired for the purposes of POS:
 - a) Must have specifically been identified as being required in any relevant Council policy or Council decision; or
 - b) Must further the objectives of any relevant Council policy; or
 - c) May be considered through the subdivision assessment process as opportunity presents provided that the land would enhance the City's POS network by providing new POS or expansion of existing POS consistent with the general principles outlined in this policy.
- 10.4. Utilisation of POS contributions for land acquisition and/or capital improvements must be determined by resolution of Council through the annual budget or budget variations (not delegation).

11. Flexibility

- 11.1. In recognition that unique circumstances may warrant departure from the considerations outlined above, alternative solutions may be considered at the discretion and resolution of Council;
- 11.2. Officer reports which propose alternative solutions to those outlined above are to be accompanied by reasons documenting:

- a) why the departure is necessary; and
- b) how the decision facilitates an alternate way of contributing to the enhancement of the city's open space network; or
- c) how the departure will not create a precedent that may lead to the undermining of the policy or compromise its consistent application.

12. *Review*

A review of this POS Policy and update if necessary should be undertaken:

12.1. As required;

12.2. Prior to the preparation of a new Planning Scheme; and

12.3. At least every 5 years.