

# Policy No. 11: Public Open Space

## POLICY MANUAL

### Policy No. 11

### Public Open Space

#### Purpose

The purpose of this Policy is to:

1. guide the Council's strategic provision of public open space;
2. establish design guidelines for public open space contributed through subdivision applications or otherwise acquired;
3. clarify the process of determining when a public open space land contribution or a cash-in-lieu contribution will be required for subdivision applications;
4. establish a consistent method of determining the value of cash-in-lieu contributions and when they are to be paid; and
5. outline how funds derived from cash-in-lieu contributions should be spent in the municipality.

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#### Next Review Date

**October 2029**

## POLICY

### 1. Definitions

*Cash-in-lieu Contribution* An amount payable to the Council under section 117 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* for the acquisition or improvement of land for public open space for the benefit of inhabitants of the municipal area.

*Council* The Meander Valley Council.

*Final Plan* A final plan of subdivision under section 87 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

*Improved Value* The value of the land upon completion of all works required by the planning permit prior to sealing of any Final Plan of Survey.

<i>Improvement</i>	Includes landscaping, fencing and the provision of playground equipment, walking paths, car parking areas and toilet facilities, as defined in the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> .
<i>Plan of Subdivision</i>	As defined in the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> .
<i>Public Open Space</i>	Space for public recreation or public gardens or for similar purposes, as defined in the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> .
<i>Public Open Space Land Contribution</i>	The area of land required by Council for public Open space under section 116 of the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> .
<i>Subdivision</i>	As defined in the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> .

## **2. Objective**

The objectives of this Policy are to:

1. ensure that public open space obtained by the Council is of a quality and standard suitable for the intended purpose;
2. ensure that developers make an appropriate contribution towards the acquisition or improvement of land for public open space for the benefit of inhabitants of the municipal area, proportional to the likely demand for public open space generated by the subdivision;
3. outline the process for determining the value of cash-in-lieu contributions, the time at which the value is to be determined and when the contribution is to be paid to the Council; and
4. ensure that cash-in lieu contributions are spent for the purpose of acquiring or improving public open space.

## **3. Scope**

The Policy applies to all subdivision applications received by the Council and the use of cash-in-lieu contributions.

## **4. Policy**

The *Local Government (Building and Miscellaneous Provisions) Act 1993* (the Act) empowers the Council to require a public open space land or cash-in-lieu contribution as a part of any plan of subdivision, or to refuse to approve a plan of subdivision because it should include or omit public open space, pursuant to sections 85, 116 and 117 of the Act.

A reasonable exercise of this power is where:

- a. the nature and extent of the subdivision is such that it will generate a need for public open space; and
- b. the need generated by the subdivision will result in a perceptible increase in the demand on existing public open space within the relevant neighbourhood, locality and/or the municipal area in general.

#### **4.1 When Public Open Space Land or Cash-In-Lieu Contributions Will Not Be Required**

The Council will not require a public open space land or cash-in-lieu contribution from subdivisions in the following circumstances:

- a. where located within the Rural Zone, Agriculture Zone, Environmental Management Zone, Landscape Conservation Zone, Utilities Zone, Community Purpose Zone, Recreation Zone or Open Space Zone;
- b. boundary adjustments;
- c. lot consolidations;
- d. subdivision for development of public utilities; or
- e. where the application for subdivision is made by, or on behalf of, the Council.

#### **4.2 Public Open Space Land Contributions**

##### *4.2.1 When a public open space land contribution will be required*

Upon demonstrating that both a need and a perceptible increase in demand for public open space is generated by the subdivision, a public open space land contribution will be required where it is considered necessary:

- a. to provide reasonable access to public open space for existing or future inhabitants within a neighbourhood, locality, and/or the municipal area generally; or
- b. to further Council's public open space objectives including, but not limited to, those identified in a Council endorsed structure plan or strategy.

Notwithstanding, if a subdivision is unable to satisfy the public open space guidelines outlined in Section 4.2.3, then a cash-in-lieu contribution will be required in accordance with Section 4.3.

##### *4.2.2 Public Open Space Land Contribution Requirements*

Where a public open space land contribution is required, up to 5% of the subdivision area will need to be set aside for this purpose and transferred to the Council's ownership, unless otherwise specified within this Section.

The Council may accept less than 5% of the subdivision area to be set aside as a public open space land contribution if the remaining equivalent amount is provided as a cash-in-lieu contribution in accordance with section 4.3.

The Council may require more than 5% of the subdivision area to be dedicated for public open space. This will only be considered in circumstances where it is considered necessary to further the Council's public open space objectives including, but not limited to, those identified in a Council endorsed structure plan or strategy. In such circumstances, the Council must purchase the excess area as provided in section 116 of the Act.

Where the subdivision is staged, the public open space land contribution must be provided and developed within a stage approved by the Council. Generally, and where practicable, this will be within one of the first stages to be developed. Where it is necessary for the public open space land contribution to be provided within a later stage, a bond may be required to secure the obligation to transfer the land.

#### *4.2.3 Public Open Space Design Requirements*

The Council will not accept land for public open space where it comprises the following:

- a. land containing above or below ground infrastructure that would unreasonably limit the use of the land for recreation or landscaping treatments;
- b. land subject to unmanageable hazards;
- c. land that cannot be sustainably managed due to steep topography, protected flora and/or fauna or other constraints;
- d. land that poses an unreasonable risk to public health due to contamination;
- e. land that unreasonably restricts public use due to access constraints;
- f. land with a site area less than 1,000m<sup>2</sup>, unless co-located with any other existing or planned public open space area;
- g. pedestrian footways or other kinds of ways dedicated under section 95 of the Act; or
- h. stormwater retention basins.

The Council will only accept land for public open space where an assessment against the Public Open Space Design Guidelines outlined in Table 1 has been undertaken and the Council is satisfied that the land is, on balance, suitably located and designed for its intended purpose.

Whilst it is not necessary for the public open space to further each principle, the inability to further an individual or combination of principles may justify the Council's refusal to accept land as public open space.

Table 1: Public Open Space Design Guidelines

<b>Theme</b>	<b>Principle</b>
Accessibility	The land is accessible and convenient for users of all ages and abilities.
Adjoining Land Use	The land is located and designed with an understanding of the influence of adjoining land use upon the useability of the proposed public open space. This includes consideration of existing or allowable land uses and associated noise, built form and height, and the ability to integrate into the surrounding areas through treatments such as alignment, fencing and landscaping.
Climate Change	The land is located and designed to minimise impacts to the anticipated service life, long-term useability and maintenance obligations of the land due to climate change impacts.
Diversity of Use	The land is capable of: <ul style="list-style-type: none"> <li>a. accommodating a range of organised, unstructured and informal recreational activities based on current and future community needs, including any likely requirement for car parking; or</li> <li>b. improving the diversity of passive and active recreational uses within the municipality (eg. neighbourhood parks, destination and/or regional facilities).</li> </ul>
Ecosystem Values	The land protects and enhances ecosystem functions, including biodiversity values, ecological diversity and waterway management.
Financial Sustainability	The land is cost effective to maintain over its effective lifetime and minimises the costs to the Council associated with: <ul style="list-style-type: none"> <li>a. obtaining and improving the land as open space to a useable standard; and</li> <li>b. the ongoing maintenance and management of the site.</li> </ul>
Limitations on Use	Public use of the land is not unreasonably restricted by features such as: <ul style="list-style-type: none"> <li>a. drainage or wetland areas;</li> <li>b. services, easements or utilities (whether underground or overground);</li> <li>c. size, shape and gradient;</li> <li>d. stormwater detention basins; or</li> <li>e. vehicular access.</li> </ul>
Safety	The land is located and designed to promote safe places, through principles outlined in <i>Crime Prevention Through Environmental Design: Guidelines for Queensland 2021</i> , as relevant.

Site Amenity	The land creates attractive environments and focal points that contribute to the amenity of the area.
Structure Plans and Strategies	The land furthers the Council's public open space objectives including, but not limited to, those identified in a Council endorsed structure plan or strategy.
Connectivity	The land is well-connected with a range of transport options, available or planned, for residents to easily access the site relative to the size and anticipated catchment for the proposed open space, including: <ul style="list-style-type: none"> <li>a. active transport linkages;</li> <li>b. linear shared trails;</li> <li>c. major roads;</li> <li>d. proximity to public transport; and</li> <li>e. the street network.</li> </ul>
Visibility	The land is visually prominent to maximise its use and contribution to the broader community, particularly where located in or near activity centres.
Walkable Catchment Areas	The land maximises, where practicable, the number of dwellings and businesses that are within a convenient five minute walking distance of the public open space network.

#### 4.2.4 *Standard of public open space land prior to transfer*

Prior to the transfer of a public open space land contribution to the Council, certain works will be required to ensure that the public open space land contribution is suitable for the intended purpose. Such works, where relevant, will include:

- a. connection of reticulated services;
- b. implementation of any management measures required to mitigate natural hazards, such as bushfire or landslip, to an acceptable level;
- c. provision of adequate access;
- d. removal of contaminated soil;
- e. removal of rubbish and debris;
- f. Removal of declared weeds.

Further works may be required depending on the individual circumstance of the land, such as:

- a. provision of fencing;
- b. tree stock surveys.

### 4.3 **Cash-In-Lieu Contributions**

#### 4.3.1 *When a cash-in-lieu contribution will be required*

The Council will require a cash-in-lieu contribution if the likely demand for public open space is not met by the Plan of Subdivision because:

- a. no public open space land contribution is proposed; or
- b. that no land within the Plan of Subdivision is considered suitable for public open space in accordance with Section 4.2.

#### 4.3.2 Amount of Cash-In-Lieu Contribution Required

Where a cash-in-lieu contribution is required, the payment must be paid to Council in accordance with section 117 of the Act.

The payment will be equivalent to the percentage, as listed in Table 2, of the value of the whole area comprised in the Plan of Subdivision, excluding the area of either:

- a. the largest lot; or
- b. lot(s) containing an existing dwelling.

The value of the following areas or lots shown in the Plan of Subdivision, proportional to the value of the whole area, will be subtracted from the required payment:

- a. public open space; and/or
- b. littoral or riparian reserves.

Where a Plan of Subdivision provides public open space or littoral or riparian reserves that constitute a percentage equal to or greater than the relevant percentage listed in Table 2 of that whole area of the Plan of Subdivision, no cash-in-lieu contribution will be sought.

Table 2: Cash-in-lieu contribution value percentages

<b>Zone</b>	<b>Percentage</b>	<b>Qualification</b>
Rural Living Zone D	1%	All properties
Rural Living Zone C	2%	All properties
Rural Living Zone A and B	3%	All properties
Low Density Residential Zone	4%	In areas with a minimum lot size of at least 5000m <sup>2</sup>
All other zones	5%	All properties

#### 4.3.3 Value Calculation of Cash-In-Lieu Contribution

Where the subdivision will create four or less additional lots, the Council will determine the value of the cash-in-lieu contribution at the time of lodgement of the Final Plan of Survey. The value of the cash-in-lieu contribution will be based on the most recent recorded valuation adjusted, as necessary, according to the applicable adjustment factor determined by the Office of the Valuer-General.

Where the subdivision will create five or more additional lots, a valuation must be undertaken by a suitably qualified person no more than three months prior to the date the final plan is lodged with the Council.

The valuation must, to the satisfaction of the Council, be based on the improved value of the land and be at no cost to the Council.

Notwithstanding, if the Council believes the valuation provided does not truly reflect the value of the land, including where it is too complex or unreasonable to rely on the most recent valuation, the Council reserves the right to require a new valuation to be undertaken by a suitably qualified person at no cost to the Council.

#### *4.3.4 Staged Subdivisions*

Where a subdivision is staged, a proportion of the total cash-in-lieu contribution - equivalent to the area of new lots and roads created - must be paid prior to sealing the final plan of survey for each stage. The proportion of the cash-in-lieu contribution payable will be expressed through conditions on the planning permit.

Where requested by the applicant prior to any planning permit being issued, Council may defer the payment of the proportioned cash-in-lieu contribution for any stage of a subdivision to the following stage. For example, the cash-in-lieu contribution required to be paid for the first stage may be paid at the time of sealing the final plan of survey for the second stage, and so on. The total cash-in-lieu contribution must be paid no later than the lodgement of the final stage of the subdivision.

A new valuation will be required for each stage of the subdivision if the subsequent stages are not completed within 12 months of the date of the initial valuation.

#### *4.3.5 Expenditure of Cash-In-Lieu Contributions*

The expenditure of cash-in-lieu contributions will be used for the acquisition or improvement of land for public open space for the benefit of inhabitants of the municipal area, in accordance with section 117(5) of the Act.

To this effect, the cash-in-lieu contributions:

- a. can be used by the Council to:
  - i. acquire new land for public open space where consistent with Section 4.2.3, including an assessment against the Public Open Space Design Guidelines, and Section 4.2.4; or
  - ii. improve existing undeveloped or underdeveloped land already owned by Council for public open space; and
- b. can be applied towards the provision of public open space anywhere in the municipal area.

Cash-in-lieu contributions must not be applied to recurrent expenditure such as the general maintenance of public open space.

## **5. Legislation and Related Standards**

*Land Use Planning and Approvals Act 1993*

*Local Government (Building and Miscellaneous Provisions) Act 1993*

## **6. Responsibility**

Responsibility for the operation of this Policy rests with the Director Development and Regulatory Services.