

## **Cash-in-Lieu of Public Open Space**

### **1. Purpose**

The purpose of this Bulletin is to outline the purposes for which cash-in-lieu of public open space given up under section 20C of the *Town Planning and Development Act 1928* may be expended.

This Bulletin is complementary to the following:

- *Policy DC 2.3 Public Open Space in Residential Areas*
- *Policy DC 4.1 Industrial and Commercial Subdivision*
- *Policy DC 3.4 Rural Land Use Planning Policy*
- *Advice Note No 2 of 1993 Review of Public Open Space Provision in Respect of Small Subdivisions.*

The Commission's public open space policy is also being reviewed as part of the preparation of the WA Community Code.

### **2. Introduction**

The Western Australian Planning Commission is responsible for determining all subdivision applications under section 20 of the *Town Planning and Development Act 1928*.

Policy DC 2.3 states that for residential subdivision, 10% of the gross subdivisible area shall be given up free of cost by the subdivider for public open space purposes. This has been the basis of the Commission's public open space policy and practice in the State for many years, and follows the recommendations of the Stephenson/Hepburn *Plan for the Metropolitan Region in 1955*.

The Commission's policy is to ensure that the provision of public open space allows for a reasonable distribution of land for active and passive recreation. This includes smaller areas of public open space within easy walking distance of dwellings, larger parks and playing fields, bushland and other natural features. Public open space, as well as providing for recreation pursuits, can also develop a sense of neighbourhood identity and contribute to the quality of life in the metropolitan region and country towns.

The Commission may also require the provision of open space in industrial, commercial and rural subdivisions where there is a need to provide for passive and active recreation areas and protect environmental features as part of the subdivision design.

Land given up as public open space under section 20A of the *Town Planning and Development Act* is vested in the Crown as a "Reserve for Recreation". Following the creation of a Crown Reserve, the local government may apply for the vesting of the land and assume responsibility for its development and maintenance.

In special circumstances, land may be permitted to be transferred to the local government in fee simple. This can only occur if the local government requests the transfer at the time of the subdivision and the land is shown as reserved for public recreation in the Council's town planning scheme, or if the land is to be held in trust pending sale. The funds obtained from the sale of the land must then be expended on the purchase of other land in the vicinity for public open space.

The Commission may also be prepared to support an arrangement where up to one fifth of the required public open space may be given up as cash-in-lieu for development. The cash-in-lieu funds must then be used to develop the land which has been given up as public open space in the same subdivision.

### **3. Cash-in-lieu of Public Open Space**

In some circumstances the provision of an area of land for public open space is not practical and it may be more appropriate for cash-in-lieu of public open space to be given for the following reasons:

- in small subdivisions, the provision of public open space may result in a small unusable area of land being set aside;
- there may be sufficient public open space already available in the locality;
- public open space may have been provided in earlier subdivisions; or
- open space is planned in another location by way of a town planning scheme or local structure plan.

Section 20C of the *Town Planning and Development Act* provides that a cash payment can be made by a landowner to a local government in lieu of all or part of the public open space contribution. The cash-in-lieu sum must represent the value of the portion of land to be given up. Provision of cash-in-lieu of land must also be approved by the local government and the Commission.

### **4. Determining a Cash-in-Lieu Sum**

The value of cash-in-lieu is determined as a percentage of the market value of the *en globo* land from which the subdivision occurs. The

valuation is determined at the time of the Commission's approval (letter) to the subdivision.

The local government will, at the expense of the subdivider, seek a valuation of the land from the Valuer General's Office or a licensed valuer.

If either the subdivider or the local government disputes a valuation, the valuation may be varied by the parties or settled by an agreed method. Section 20C(5) and 20C(6) of the *Town Planning and Development Act* provide for arbitration if the parties dispute the valuation.

## **5. Procedures for Obtaining Approval to Cash-in-Lieu**

The legislation does not presently allow the Commission to impose a specific condition requiring cash-in-lieu. Where the Commission is of the opinion that it would be more appropriate to require a cash-in-lieu contribution, it will impose a condition on the subdivision approval requiring a certain area of land to be shown on the Plan or Diagram of Survey as a 'Reserve for Recreation'. The Commission will advise the applicant in the approval that, subject to a further request, it may be prepared to allow a cash payment to the local government in lieu of ceding land for public open space.

The local government in making its comments to the Commission on a subdivision application may recommend that cash-in-lieu be provided. If the Commission agrees, it will impose a condition stating the amount of open space that is required and will advise the applicant that, as an alternative, cash-in-lieu may be provided. In this circumstance, it will not be necessary to seek the Commission's further approval to the payment of cash-in-lieu.

## **6. Appropriate Uses for Cash-in-Lieu Funds**

Section 20C of the *Town Planning and Development Act* provides that cash-in-lieu funds received by a local government must be paid into a separate (trust) account. Under the *Local Government Financial Management Regulations 1996*, the account should clearly set out the purpose for which the money is held, the landholding from which it was obtained and the date on which it was paid to the local government.

Cash-in-lieu funds may be used in the following manner:

- for the purchase of land for parks, recreation grounds or open spaces generally, in the locality in which the subdivision is situated;

- in repaying loans raised by the local government for the purchase of such land; or
- with the approval of the Minister for Planning, for the improvement or development as parks, recreation grounds or open spaces generally of any land in the said locality vested in or administered by the local government for any of those purposes.

## **7. Requests for the Expenditure of Cash-in-Lieu**

Requests to the Minister for Planning for the expenditure of cash-in-lieu should be submitted in the first instance to the Commission. The request should be accompanied by a map and schedule showing:

- the location and WAPC reference number of the subdivision from which the funds were obtained;
- the dollar value of funds obtained from the subdivision;
- the location of the proposed reserve where the funds are proposed to be expended;
- the nature of the proposed expenditure; and
- the program for the expenditure of the funds.

The Commission will refer the proposal to the Minister for his consideration.

## **8. Acceptable Uses for Expenditure of Cash-in-Lieu Funds**

The intent of the Commission's Policy DC 2.3 is to ensure that there is appropriate land set aside and developed as functional open space within residential areas. Accordingly, expenditure of cash-in-lieu funds must be directly related to the use or development of the land for public open space purposes.

The land must be vested or administered for recreation purposes. Land held in fee simple by the local government should, as a prerequisite, be reserved for public recreation in the Council's town planning scheme.

The proposed development should be for uses to which the public has unrestricted access.

Acceptable expenditure for cash-in-lieu funds may be for:

- clearing
- seating
- earthworks
- spectator cover

- grass planting
- toilets
- landscaping
- change rooms
- reticulation
- lighting
- play equipment
- pathways
- fencing
- walk trails
- car parking
- signs relating to recreational pursuits

## **9. Unacceptable Uses for Expenditure of Cash-in-Lieu Funds**

Use of cash-in-lieu would not normally be acceptable for:

- community halls or indoor recreation centres
- enclosed tennis courts
- bowling greens for clubs
- facilities for private clubs

and similar facilities where access by the general public is restricted.

## **10. Expenditure of Funds from the Sale of Section 20A Reserves**

There may be occasions when the local government considers that an existing area of local public open space is not in a suitable location, or of an appropriate size, to meet the needs of the community. In such circumstances, local governments may wish to rationalise all or part of the open space and use the funds for other purposes.

The disposal of land set aside as a Section 20A reserve is governed by the *Land Act 1933*. The Department of Land Administration has issued a policy and guidelines on the use and disposal of Section 20A reserves entitled *Guidelines for the Administration of Section 20A Public Recreation Reserves*.

Under those guidelines, proceeds from the sale of Section 20A reserves may be used by the local government to acquire other land for public open space or may be spent on capital improvements to existing areas of open space.

The approval of the Commission is required for the disposal of any land which has been given up under Section 20A of the *Town Planning and Development Act*. The Commission will have regard to its policy on the provision of open space and the matters outlined in this Bulletin

prior to any approval being given.

## **11. Information and Comment**

Enquiries concerning public open space and cash-in-lieu may be directed to the Ministry for Planning Business Unit or Regional Officer responsible for your region or area of the State.

Any written comments or suggestions concerning policy, practice and procedures in relation to public open space and cash-in-lieu may be directed (quoting File 1-1-1-12 Vol 2) to:

**Western Australian Planning Commission,  
Albert Facey House,  
469 Wellington Street  
Perth. Western Australia 6000  
Phone (08) 9264 7777**