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## BACKGROUND NOTES

1. The basic component of this policy is the requirement that 10 percent of the gross subdivisible area of a conditional subdivision shall be given up free of cost by the subdivider for public open space. This has been the basis of public open space policy in the State for many years, and emanates from the recommendations of the Plan for the Metropolitan Region Perth and Fremantle, 1955 Report (the Stephenson - Hepburn Plan).
2. The former Town Planning Department in 1980 issued a report on its study of local and district open space in the metropolitan region, which examined in some detail the adequacy of open space set aside in land subdivisions for that purpose. After some careful assessment of the 10 percent requirement, the report concluded that the basic requirement should continue to apply, although there should be some flexibility applied in the particular circumstances of specific cases. This policy reflects that conclusion.
3. The Commission updated the policy in June 1998 to clarify the uses to which funds raised in lieu of open space provision may be used, as set out in Planning Bulletin No. 21 April 1997 and in April 2002 to establish the circumstances where an open space contribution will be required in small subdivisions and clarify open space credits for easements.
4. The Commission is aware of the continuing debate about the validity of certain aspects of this policy in the light of such matters as restraints on local government expenditure (with consequent limiting effects upon its ability to develop and maintain open space), the need to ensure adequate open space in existing urban areas, and the balance between passive and active recreational areas. This policy is subject to a comprehensive review.
5. The Commission's Liveable Neighbourhoods Community Design Code aims to make the State's suburban areas more sustainable and offer a wider range of housing and employment to support changing community needs and preferences. The code is undergoing refinement. This policy, and the related Guidelines for the Preparation of Local Structure Plans for Urban Release Areas, will be modified where appropriate following the review and refinement of Liveable Neighbourhoods.

The provisions of this policy will also be reviewed in the context of the Commission's current reviews of coastal planning and development and foreshore policy.

6. The policy is closely related to existing policies which deal with the subdivision of residential land and also with coastal management issues. Related policies are:
  - Policy No. DC 2.1 - Residential Planning Codes
  - Policy No. DC 2.2 - Residential Subdivision
  - Policy No. DC 4.1 - Industrial Subdivision
  - Policy No. DC 6.1 - Country Coastal Planning Policy.

## **1. INTRODUCTION**

- 1.1 In order to preserve amenity and contribute to the quality of life in urban areas, including country towns, the Commission has resolved, as a general policy, to require suitable provision of public open spaces which can be used by people living and/or working in those areas.
- 1.2 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 in each locality. The Commission accepts that this may be secured by providing larger areas for active recreation and smaller areas for passive recreation within residential cells, but treats each case on its merits.
- 1.3 This policy sets out the requirements of the Commission for public open space and the provision of land for community facilities in residential areas. Requirements for industrial areas are incorporated in the policy on Industrial Subdivision (DC 4.1).

## **2. POLICY OBJECTIVES**

- ❑ To ensure that all residential development in the State is complemented by adequate, well-located areas of public open space that will enhance the amenity of the development and provide for the recreational needs of local residents.
- ❑ In appropriate cases, to facilitate the provision of land for community facilities - such as community centres, branch libraries and day-care centres - in conjunction with land ceded for public open space.
- ❑ To protect and conserve the margins of wetlands, water-courses and the foreshores adjacent to residential development.

## **3. POLICY MEASURES**

### **3.1 General Requirements**

- 3.1.1 The Commission's normal requirement in residential areas is that, where practicable, 10 percent of the gross subdivisible area be given up free of cost by the subdivider and vested in the Crown under the provisions of Section 20A of the *Town Planning and Development Act, 1928* (as amended) as a Reserve for Recreation. In determining the gross subdivisible area the Commission deducts any land which is surveyed for schools, major regional roads, public utility sites, municipal use sites, or, at its discretion, any other non-residential use site.
- 3.1.2 The 10 per cent requirement is derived from the recommendations contained in the Stephenson-Hepburn Plan. That report states that for most areas a standard of 3.36 hectares per 1,000 population (excluding school playing fields) is recommended as sufficient for public open space.

On the basis of a uniform density of 30 persons per hectare, a standard contribution of 10 percent of the gross residential area for public open space has been applied since 1956. This requirement remains valid, as gross residential densities have remained much the same since that time, with smaller lot sizes being offset by declining household occupancies.

- 3.1.3 In terms of the location and distribution of public open space, the Commission favours an overall balance between incidental open space, readily accessible to all residents, and recreational open space in larger units suitable for active leisure pursuits. In this regard it will seek the advice and comment of the relevant local government. It will also seek local government advice upon the suitability in physical terms of land shown upon plans of proposed subdivision for development as open space.
- 3.1.4 The Commission may require that the public open space for the whole of a parcel of land be met entirely from the first stage of subdivision, or from any succeeding stage, if it considers this desirable.
- 3.1.5 The Commission will not normally require an open space contribution for five lots or less, provided a contribution is not required by a provision of a town planning scheme or approved structure plan, where:

- the applicant demonstrates to the satisfaction of the Commission that land has already been given up for open space in an earlier subdivision; or
- the proposal is within a locality where the Commission, on the advice of the local government, following an assessment of the locality, has concluded that there is sufficient open space in that locality.

3.1.6 The Commission may impose an open space condition where an application would create five lots or less where:

- the imposition of the condition would yield an area of land which the Commission and Council agree is adequate and suitable for public open space purposes; or
- the local government has identified an existing or potential deficiency of public open space and has an adopted strategy to improve or provide open space by land acquisition in the locality of the subdivision; or
- similar proposals containing five lots or less would be likely to eventuate in the locality.

## 3.2 Foreshore Reserves

3.2.1 The Commission may require provision of a foreshore reserve where a subdivision includes land abutting a watercourse (e.g. river or creek) or body of water (e.g. lake or the sea). Such reserves will be required to be shown on the survey documents either as a Reserve for Recreation or a Reserve for Foreshore Management, dependent upon the use to be made of the land, and vested in the Crown under the provisions of Section 20A of the *Town Planning and Development Act*. The land in the reserve is to be ceded to the Crown free of cost and without payment of compensation by the Crown.

3.2.2 The required width of a foreshore or coastal reserve varies according to the size of the watercourse or body of water and the condition of its banks, shore or coastline. As a general rule in the case of river or lake foreshores, a reserve of 30 metres' width is required, but each application is examined in detail. Where, for topographical or other reasons, such as protection of a floodway, a greater or lesser width is considered necessary or desirable in the public interest, such a width may be specified. In the case of a coastal

reservation, the Commission will apply the principles contained in its coastal planning policy (DC 6.1) with a guideline width of 100 metres.

3.2.3 In general, the width of the reserve is to be measured from the high-water mark in the case of tidal waters and the top of the bank as defined by the surveyor in the case of non-tidal streams or waters.

3.2.4 Where the Commission requirement for provision of a foreshore management reserve necessitates a boundary survey of the reserve, where such a survey would not otherwise be required, and where the cost of surveying the boundary would be excessive compared with the cost of surveying the rest of the subdivision, the Commission's policy is to request the Department of Land Administration to meet the costs of survey of the reserve.

3.2.5 Where foreshore management reserves are required to be provided pursuant to the Act and the provisions of this policy, and it is not essential that public access to those reserves be provided in the short or medium term, the Commission will support proposals for adjoining or nearby property owners to lease the reserves where it can be demonstrated that restricted private use of the land is consistent with the effective management of the foreshore concerned for the period until public control is seen to be necessary.

3.2.6 It should be noted that where the Commission considers that a foreshore reserve is to be given up as a condition of subdivision, the area of foreshore so required will not be included in the gross subdivisible area on which the public open space requirement is assessed and will be in addition to the land required for public open space.

## 3.3 Regional Open Space

3.3.1 Where a proposed subdivision includes land which is designated as a Parks and Recreation reserve under the Metropolitan Region Scheme, or a regional planning scheme, and cannot be dealt with as either a foreshore reserve under the provisions of Section 3.2, or as part of a subdivider's 10 percent public open space contribution under the provisions of sub-clause 3.3.2, the Commission will require that the land so reserved shall be shown on the survey documents as a separate lot pending acquisition by the Commission pursuant to that scheme.

3.3.2 The Commission may accept that land reserved for Parks and Recreation under the Metropolitan Region Scheme or a regional planning scheme (excluding land dealt with as a foreshore reserve) may be included in the subdivider's 10 percent public open space contribution where it can be demonstrated to the satisfaction of the Commission and the local government that the subject land can be used for an appropriate local (as well as a regional) purpose. In such instances the Commission shall require the subdivider's public open space contribution to be either:

- vested in the Crown free of cost as a Section 20A reserve for the purpose of recreation, or
- transferred to the Commission in fee simple.

Prior to accepting a subdivider's public open space contribution in accordance with this sub-clause, the Commission may require a management plan which demonstrates that the subject land can be used for an appropriate local (as well as a regional) purpose and may require the local government's agreement to accept responsibility for management of the land.

### 3.4 Public Utility Uses

3.4.1 The Commission is not prepared to accept as open space land which is occupied by public utility uses such as drainage sumps. However, it may agree to such features as landscaped compensating basins being included and credited either in whole or in part as a portion of a public open space contribution. In order to be acceptable to the Commission, such compensating basins, drainage reserves and underground pumping stations, etc. shall be so located, designed and landscaped that the public is able to use the open space for safe, passive and/or active recreation and amenity is not impaired.

3.4.2 The Commission's general practice is that up to 100 per cent of compensating basins may be credited towards the public open space requirement where the land is not subject to permanent inundation provided it is contoured, unfenced and fully usable for recreation purposes. Up to 50 per cent may be credited in other circumstances subject to the advice of local government.

3.4.3 The Commission will not object to a transformer pad for underground power being adjacent to or immediately within the boundary of public open space provided that it

is so located as not to reduce the viability of that space. However, the area of its site will not be credited as public open space.

3.4.4 Subject to advice from the local government that sufficient land will be available in the locality to meet the full range of recreational needs of the future residents, and evidence from the beneficiary of the easement to confirm that the purpose of the easement, the Commission may grant a credit of:

- up to 50% of the land subject to an easement containing underground infrastructure (eg – gas pipeline); and
- up to 20% of the land subject to an easement containing above ground infrastructure (eg – power line).

Maximum credit should only be granted in cases where there is no impediment to use the easement for open space, where the easement is within or abuts the subject subdivision or relevant subdivision road and where the local government has indicated that at least half of the open space contributed, directly or indirectly, by the subdivision is developable for active recreational pursuits.

For the purposes of calculating the POS requirement of a locality, land subject to an easement shall not be included within the gross subdivisible area. However, land required for any buffers or additional setback requirements from an easement may be included in the gross subdivisible area.

### 3.5 Community Facilities

3.5.1 Closely allied to the provision of public open space is the allocation of sites for community facilities such as community centres, meeting halls, branch libraries and kindergartens, pre-schools and day-care centres. The Commission accepts that there may be circumstances where the 10 per cent proportion of public open space within a subdivision may, at the request of a local government, be reduced provided that land equivalent in area to the reduction is made available free of cost to the local government as a community facilities site.

3.5.2 Before accepting any such arrangement, the Commission will require the local government to justify the need for the community facilities site, giving some details of the use to be made of the land, the timing of any development, the manner in which the facility will be operated, and the provision to be made for car parking.

3.5.3 Desirably, community facilities sites should adjoin public open space to facilitate conjoint

use and maintenance, should not have an area less than 2,000m<sup>2</sup> and should not exceed one fifth of the total area which, but for this provision, would have been required for public open space.

- 3.5.4 In circumstances where the Commission has been satisfied that the need exists for a community facilities site to be transferred in fee simple free of cost to the local government, the Commission, as a pre-requisite to any such transfer, will require that the land is suitably reserved for an appropriate public purpose by the local government in its town planning scheme.

### **3.6 Development of Public Open Space**

- 3.6.1 The Commission's requirements that land for public open space be given up as a condition of subdivisional approval do not extend to the physical development of the land. It is the intention that when such land is vested in the relevant local government, development should be undertaken through the budget of that authority at the appropriate time. Local governments should ensure that the development of public open space is safe for use by the public.
- 3.6.2 The Commission may, in the particular circumstances of the case, be prepared to support the spending of cash-in-lieu funds on the development of that public open space being set aside by the subdivider on the basis that the amount allocated does not exceed more than one fifth of the total 10 percent requirement. In normal practice, this could result in a maximum of 8 percent open space land provision and a 2 percent cash-in-lieu expenditure on development of land. However, when the land to be set aside as open space is less than 8 percent, and cash-in-lieu is to be provided for the balance, the proportion to be cash-in-lieu which can be spent on the development of public open space within the subdivision should be adjusted accordingly and should not exceed one fifth of the value of the land to be set aside for public open space.
- 3.6.3 On the basis set out in clause 3.6.2, the funds generated from cash-in-lieu may be used through the procedures outlined in Section 4, to develop that part of the requirement that is given up as undeveloped land. Before so doing, however, the Commission will need to be satisfied as to the support for such a proposal from the developer, Council, and the community and receive some assurances that development will occur within a reasonable period of time.

## **4. IMPLEMENTATION PROCEDURES**

### **4.1 Vesting Under the Town Planning and Development Act**

- 4.1.1 In general, public open space and foreshore management reserves created in the subdivision are to be transferred to the Crown. Section 20A of the *Town Planning and Development Act* provides that where a Diagram or Plan of Survey is approved any land which is shown on the diagram or plan as being reserved for recreation or foreshore management shall vest in the Crown without any conveyance, transfer or assignment or payment of a fee. As far as possible the provisions of this section should be used to convey proposed recreation areas to the Crown.

- 4.1.2 Where land for public open space is subsequently vested in a local government, that land is to be used only for public recreational purposes, and remain open to the general public at all times. The Commission will request the Department of Land Administration to ensure that this is done. However, the Commission recognises that there may be occasions where the use of some discretion in the operation of this policy is warranted in order to secure better land utilisation and increased public benefit. In such circumstances, the Minister for Lands can, following consultation with the Commission, exercise that discretion.

### **4.2 Transfer to Local Governments in Fee Simple**

- 4.2.1 In special circumstances, the Commission may require land to be transferred, free of cost, to the local government for a public purpose, including recreation, subject to the proviso that any subdivisional costs and cost of associated services for the land will be met by the local government.
- 4.2.2 A condition requiring that land be transferred in fee simple free of cost to the local government for public recreation purposes will be imposed only under all the following circumstances:
- a) the local government requests the transfer; and
  - b) the land is shown in the local town planning scheme as reserved for public recreation; or

- c) the land is to be held in trust pending sale, the monies from which are to be expended, with the approval of the Commission, upon the purchase of other land in the vicinity which is considered to be more appropriately located for use as public open space and which is shown in the local government's town planning scheme as reserved for public recreation, such land to be transferred free of cost to the Crown to be created as a reserve for public recreation.

### 4.3 Cash-In-Lieu

4.3.1 Sections 20C (1) to 20C (7) of the Act contain provisions under which a cash payment can be made by the subdivider in lieu of providing land for open space. The Commission recognises that in certain circumstance the use of these provisions should be encouraged. These circumstances include subdivisions where:

- the land area is such that a 10 percent contribution would be too small to be of practical use;
- there may be sufficient public open space already in the locality;
- public open space is planned in another location by way of a town planning scheme or local structure plan.

4.3.2 Taking account of the provisions of 4.3.1 the Commission may impose an open space condition with a footnote seeking the provision of a cash-in-lieu equivalent of the public open space, where:

- the local government has requested the condition and identified an existing or potential deficiency of public open space;
- the local government has an adopted strategy to provide open space by land acquisition in the locality of the subdivision; and
- the otherwise required 10% area of open space would yield an area of unsuitable size/s and dimension/s to be of practicable use.

4.3.3 The Commission may require an open space contribution of a lesser amount than 10% where a proposal to create five lots or less is located within a locality where a number of

lots could be similarly subdivided, in the expectation of an equivalent cash-in-lieu contribution being made by the applicant under Section 20C.

4.3.4 The Act requires that the use of cash-in-lieu must be initiated by the owner of the land concerned, and requires approval of the relevant local government and the Commission. In cases where the Commission considers that it may be appropriate to use these provisions, the applicant will be so advised in a footnote to the Commission's letter of approval.

4.3.5 All money received by the local government in this way is required by the Act to be paid into a separate account of that authority, which under the Local Government Financial Management Regulations, 1996 should clearly set out the purposes 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. The money should be applied:

- a) for the purchase of land by the local government for parks, recreation grounds or open spaces generally, in the locality in which the land included in the plan of subdivision is situated;
- b) in repaying any loans raised by the local government for the purchase of any such land; or
- c) with the approval of the Minister for Planning, for the improvement or development as parks, recreation grounds or open spaces generally or any land in the said locality vested in or administered by the local government for any of those purposes.

4.3.6 In each such instance, the Commission will wish to be advised of the location of the land in respect of which the money is to be expended, the nature and the timing of the expenditure, and the amount of money held by the local government concerned for acquisition or improvement of public open space in the locality concerned. In addition, when it has recommended to the Minister that approval be given to the use of cash-in-lieu funds as provided for in paragraph 4.3.3(c) above, it will also recommend that the local government indicate when those improvement works have been completed.



- 4.3.7 The Commission also requires that local governments provide an annual statement of the separate cash-in-lieu account, in order that it may be appraised of the position in each local government area with respect to the use of cash-in-lieu funds.
- 4.3.8 Expenditure of cash-in-lieu funds must be directly related to the use or development of land for public open space purposes. The land must be vested or administered for recreation purposes with unrestricted public access. Land held in fee simple by the local government should, as a pre requisite, be reserved for public recreation in the Council's town planning scheme.
- 4.3.9 The 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 or similar facilities where access by the general public is restricted. 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
- 4.3.10 Requests to the Minister for Planning for approval of the expenditure of cash-in-lieu should be submitted to the Commission accompanied by a map and schedule showing:
- the location and Commission reference number of the subdivision from which the funds were obtained;
  - the dollar value of the funds obtained;
  - 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.